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LETTER DATED 9 APRIL 1998 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to convey the attached communication, dated 7 April 1998, which I have received from the Director General of the International Atomic Energy Agency.

I should be grateful if you would bring the Director General's letter to the attention of the members of the Security Council.

(Signed) Kofi A. ANNAN

98-10022 (E) 090498

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Best copy available

Annex

Letter dated 7 April 1998 from the Director General of the International Atomic Energy Agency addressed to the Secretary-General

In paragraph 16 of resolution 1051 (1996), of 27 March 1996, the Security Council called for the consolidation of the periodic requirements for progress reports under resolutions 699 (1991), 715 (1991) and 1051 (1996), and requested the Director General to submit such consolidated reports every six months to the Council, commencing on 11 April 1996.

It would therefore be appreciated if you could arrange to transmit to the President of the Security Council the enclosed fifth consolidated semi-annual report under paragraph 16 of resolution 1051 (1996). I remain available for any consultations you or the Council may wish to have.

(Signed) Mohamed ELBARADEI

Appendix

Fifth consolidated report of the Director General of the International Atomic Energy Agency under paragraph 16 of Security Council resolution 1051 (1996)

INTRODUCTION

1. In paragraph 16 of resolution 1051 (1996), adopted on 27 March 1996, the Security Council called for the consolidation of the periodic progress reports required under resolutions 699 (1991), 715 (1991) and 1051 (1996), and requested the Director General of the International Atomic Energy Agency (IAEA) to submit such a consolidated report every six months to the Council, commencing on 11 April 1996.

2. The Director General submits herewith the fifth[a] such consolidated report under paragraph 16 of resolution 1051 (1996).

PROGRESS REPORT FOR THE PERIOD 1 OCTOBER 1997 TO 1 APRIL 1998

Inspection activities

3. In the period under review (1 October 1997-1 April 1998), the IAEA Nuclear Monitoring Group carried out 211 monitoring inspections at some 93 locations, of which 18 inspections were carried out at locations not previously inspected. The total number of ongoing monitoring and verification (OMV) inspections carried out to date now totals almost 1,250. The majority of these were carried out with no prior announcement, and a number of them were conducted in cooperation with the monitoring groups of the United Nations Special Commission (UNSCOM). No indication of prohibited materials, equipment or activities was detected during these inspections.

4. IAEA and UNSCOM have continued their implementation of a joint programme of inspection of Iraqi sites which, in the judgement of IAEA and UNSCOM, are deemed to have capabilities suitable for conducting work on some aspect of weapons of mass destruction, notwithstanding the lack of evidence or indication of such work. In consultation with IAEA, UNSCOM established a special team, within the Baghdad Monitoring and Verification Centre (BMVC) organization, which was to include the planning and execution of capable site inspections by joint IAEA/UNSCOM multidisciplinary teams as a major component of its activities. The carrying out of inspections at capable sites on a regular basis contributes to the effectiveness of the OMV plan in its ability to detect any attempt by Iraq to conduct activities prohibited by Security Council resolutions. The current total of inspections at capable sites numbers some 45. No indication of

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[a] The previous consolidated reports of the Director General of IAEA were circulated as documents S/1996/261 on 11 April 1996, S/1996/833 on 7 October 1996, S/1997/297 on 11 April 1997 and S/1997/779 on 8 October 1997.

prohibited equipment, materials or activities has been detected in these inspections.

5. The tenth radiometric survey of Iraq's main watercourses was carried out from 20 to 30 October 1997. The results of this and previous surveys have shown no indication of Iraq having carried out any prohibited nuclear activities, but, as previously reported, they have confirmed the sensitivity of the technology by detecting Iraq's permitted use of radioisotopes in medical applications.

6. The OMV activity of conducting routine interviews of key Iraqi personnel has continued but the efficiency of this activity is increasingly affected by difficulties in locating such personnel owing to their stated transfer from government jobs to the private sector. Further work has been done to improve the implementation of aerosol sampling and fixed-point and land-vehicle-based radiometric surveys. Work is currently in progress to evaluate the practicability of a plan for wide-area environmental monitoring as a means of strengthening OMV activities.

7. With the support of a Member State, an extensive baseline survey of environmental tritium concentrations was carried out over a period of 20 days in November and December 1997. In addition, the survey team collected samples of tree sections to confirm the nature and chronology of past tritium activities.

8. In anticipation of the implementation of additional OMV technical measures, a decision was taken in the autumn of 1997 to increase the staffing of the Nuclear Monitoring Group. IAEA has essentially depended on six Member States to provide personnel resources to support its activities in Iraq but, on this occasion, requests were made to some 20 additional Member States to provide suitably qualified technical experts for short-term assignment to work with the IAEA Nuclear Monitoring Group in Iraq. About half of the Member States approached responded both promptly and positively such that IAEA is already able to satisfy its additional staffing requirements well into 1999. It is hoped that other Member States will also provide such resources in the future.

9. As a result of Iraq's action of 29 October 1997, through which it sought to impose conditions on the inspection process, the Agency's ongoing monitoring and verification activities were suspended between 30 October and 22 November 1997. Monitoring inspections were restarted on 22 November at the more significant sites and, for the period from 25 November to 4 December, IAEA assigned an additional 11 persons to the Nuclear Monitoring Group in order to expedite the completion of inspections required to re-establish baseline knowledge. The team carried out a total of 49 monitoring inspections and radiation mapping surveys in the 10-day period and were able to conclude that there were no indications of prohibited activities having been undertaken at the facilities inspected. Furthermore, the team was able to confirm that there were no indications that movements of equipment and materials, other than those declared by Iraq, had occurred and that all equipment and materials had been returned to their former locations.

Entry to presidential sites

10. A member of the IAEA Iraq Action Team participated, as a technical adviser, in the Secretary-General's delegation that visited Iraq in February 1998 to discuss a mechanism through which to secure access, for UNSCOM and IAEA, to locations designated by Iraq as presidential sites. As reported by the Secretary-General, the visit resulted in the signing, on 23 February 1998, of a memorandum of understanding between the Secretary-General and the Government of Iraq, recording, inter alia, Iraq's reconfirmation of its acceptance of all relevant resolutions of the Security Council; Iraq's reiteration of its undertaking to cooperate fully with UNSCOM and IAEA; Iraq's undertaking to accord to UNSCOM and IAEA immediate, unconditional and unrestricted access in conformity with Security Council resolutions; and outlining special procedures for initial and subsequent entries to presidential sites, which would be implemented by a special group established for that purpose, headed by a commissioner, appointed by the Secretary-General, and comprising senior diplomats appointed by the Secretary-General and experts drawn from UNSCOM and IAEA. A list of locations designated by Iraq as presidential sites is annexed to the memorandum of understanding.

11. During the period from 26 March to 3 April, 15 IAEA experts participated in the special group, referred to above, which made entry to all of the locations designated by Iraq as presidential sites, for the purpose of establishing baseline data to facilitate any future entry to these sites. The IAEA experts, working as part of the special group, were able to complete their mandated tasks and were provided with practical cooperation from the Iraqi counterpart. The mandated tasks conducted at the eight presidential sites revealed no immediate indications of the presence of prohibited materials or equipment or of the conduct of prohibited activities with respect to the mandate of IAEA under the relevant Security Council resolutions.

Declarations under the OMV plan

12. Paragraph 22 and annex 2 of the OMV plan (S/22872/Rev.1 and Rev.1/Corr. 1) require Iraq to provide semi-annual declarations in January and July on the current use of facilities, installations and sites, including those formerly involved in its clandestine nuclear programme, and on changes during the previous six months regarding the inventory and location of materials, equipment and isotopes identified in annexes 3 and 4 of the plan.

13. In response to an IAEA request, Iraq's declarations for both of the six-month periods of 1997 have contained expanded information on certain sites involved in the production of materials, equipment and components, as well as sites involved in design and in research and development work. Iraq's declaration for the second half of 1997 includes information on activities undertaken at those sites during that period; the current organizational structure of individual sites and their key management staff; the basic elements of the implemented programmes and the associated budgets, material, equipment and components produced; main customers; technical reports issued during 1997 and activities planned for 1998. As requested, the declarations also include more complete information on Iraq's isotope holdings. The expanded information provided by the Iraqi counterpart will assist IAEA in improving the efficiency

of its monitoring and verification activities in Iraq. However, there remain a number of sites for which the requested information was not provided and, in general, there is a continuing need for improvement in the consistency and accuracy of the data.

14. Iraq's declaration of nuclear material transactions and inventories covering the period from 1 January 1989 to 31 December 1991 were reviewed in detail with the counterpart to further clarify nuclear material flows and inventories at the principal locations at which nuclear material was used or stored during that period. The Iraqi counterpart has provided revised data that appears to take into account many of the requested clarifications. The data are currently under detailed review.

15. Based on the Agency's evaluation of the declarations received in January 1998, a number of matters were identified as requiring action by the Iraqi counterpart to further improve the accuracy and completeness of the declarations. In particular, the Iraqi counterpart has been requested repeatedly to implement quality assurance measures to deal with generic problems regarding accuracy, completeness and internal consistency.

Release, relocation and change of use of equipment, material and facilities

16. In the period under review, Iraq's National Monitoring Directorate submitted 23 requests to IAEA for approval of the release/relocation of equipment and materials or of the change of use of monitored buildings. Such requests are processed in consultation with the Special Commission. Eighteen of the 23 requests have been approved, two have been declined and the remainder are awaiting the provision of additional information by the Iraqi counterpart. Items for which release, relocation or change of use is approved remain subject to ongoing monitoring and verification at a frequency commensurate with their significance.

Export/import mechanism

17. The export/import monitoring mechanism for Iraq, jointly administered by UNSCOM and IAEA, has, since October 1996, received notifications of some 130 transactions involving the intended export to Iraq of items identified in the annexes to the respective OMV plans. Two of these notifications potentially involve items identified in annex 3 to the IAEA OMV plan and are currently under technical review.

Action Team Leader technical discussions in Iraq

18. As reported in the note by the Secretary-General of 15 January 1998 (S/1998/38), the Leader of the IAEA Action Team, accompanied by a team of IAEA technical personnel, visited Iraq from 19 to 22 December 1997 to endeavour to clarify, inter alia, the five matters enumerated in paragraph 75 of the Agency's fourth consolidated report to the Security Council (S/1997/779). During that same visit, further discussions were held regarding (a) the status of the design options for Iraq's planned nuclear weapon and (b) the Agency's access to reports that Iraq's nuclear team had been required to submit to the head of Iraq's clandestine nuclear programme (PC-3), regarding their interaction with IAEA

inspection teams. The use by IAEA and UNSCOM of fixed-wing aircraft within Iraq for logistical and technical purposes was also discussed.

19. The December 1997 discussions resulted in the provision by Iraq of information regarding its post-war procurement procedures; Iraq's assistance in the identification of the foreign principals involved in the offer of assistance to Iraq's clandestine nuclear programme under assessment by IAEA; Iraq's statement that it had no objection to the Agency's use of fixed-wing aircraft for technical monitoring purposes; Iraq's undertaking to attempt to locate the reports of its nuclear team referred to in paragraph 18 above; Iraq's agreement to produce a summary of the technical achievements of its clandestine nuclear programme; and Iraq's agreement to issue a consolidated version of its full, final and complete declaration.

20. At the same time, the Iraqi counterpart reaffirmed that following the Gulf war, the late Lieutenant-General Hussein Kamel had taken actions related to Iraq's clandestine nuclear programme that were independent, unauthorized and without the knowledge of the Government of Iraq; that Iraq had not followed up any offers of assistance to its clandestine nuclear programme other than the declared foreign assistance to its centrifuge programme; and that the so-called "high governmental committee", initially described by the Iraqi counterpart to have been established in June 1991 and headed by Deputy Prime Minister Tariq Aziz, had not, in fact, been an established entity. As previously reported, IAEA has no independently verifiable information through which to confirm or confute the above statements.

21. The Leader of the IAEA Iraq Action Team, accompanied by another team member, made a further visit to Iraq from 22 to 25 March 1998, to follow up matters arising from the December 1997 visit. In the course of discussions, the Iraqi counterpart reported that it had been unsuccessful in its attempts to locate the reports of the Iraqi nuclear team referred to in paragraph 18 above. IAEA pointed out that it had identified what appeared to be sections of these reports, along with internal distribution cover-letters, on word-processing diskettes which Iraq had previously provided to IAEA. The Iraqi counterpart declared its willingness to assist IAEA to identify files on the word-processing diskettes containing reports of the Iraqi nuclear team and undertook to determine whether such reports might still be found in the files of the former Chairman of the Iraqi Atomic Energy Commission.

22. In response to an earlier IAEA request, the Iraqi counterpart had provided to IAEA a copy of the minutes of a meeting held on 12 January 1991, in which a decision had been taken regarding the overall dimensions of the spherical wave explosive lenses. This three-page record was observed to have been extracted from a bound document and, during the March discussions, the Iraqi counterpart was asked to provide the entire document to IAEA. The document was received in Baghdad on 1 April 1998.

23. The question of Iraq's response to offers of assistance to its clandestine nuclear programme was addressed again and further information was provided by the Iraqi counterpart to facilitate the identification of the foreign nationals involved in the case in question. In this connection, a formal approach has

recently been made to the Government of one of the foreign nationals in order to address the wider proliferation-related implications.

24. The Iraqi counterpart was asked to provide a statement on the status of its obligations under paragraph 34 of the IAEA OMV plan, which requires that Iraq adopt the necessary measures to implement its obligations under resolutions 687 (1991) and 707 (1991), and other relevant resolutions and the Agency's OMV plan, and, in particular, to enact penal laws to prohibit all natural and legal persons under Iraq's jurisdiction or control from undertaking anywhere any activity that is prohibited for Iraq by relevant Security Council resolutions or by the Agency's OMV plan. According to the Iraqi counterpart, the required penal laws are under active consideration.

25. Matters were discussed arising from the Agency's recent interview of one of the foreign nationals who had contributed to Iraq's centrifuge enrichment programme. The principal outcome of that interview, facilitated by a Member State, was the foreign national's statement that he had made only two batches of carbon fibre composite cylinders (in total, 18 cylinders) for centrifuge rotors. This statement differs considerably from that of the Iraqi counterpart, who attributed the supply of 50 cylinders to the individual concerned.

26. The Iraqi counterpart was firm in its insistence that the foreign national had, in fact, been the sole source of carbon fibre composite cylinders and that the number so supplied had been 50. The Iraqi counterpart reiterated that the first batch of 20 cylinders had been determined, by theoretical analysis, to have been wound to an inappropriate specification, having been based on the dimensions of the cylinder designed to be manufactured from maraging steel. The Iraqi counterpart arranged for the IAEA team to interview the person involved in the receipt of the carbon fibre composite cylinders. The person interviewed provided a detailed description of the manner in which two consignments, comprising the 30 cylinders of the second batch, had been received from the foreign national. The explanation was credible and supported Iraq's earlier statements that all 50 cylinders had been supplied by the same foreign source.

27. The Leader of the IAEA Iraq Action Team met with Deputy Prime Minister Tariq Aziz and took the opportunity to explain that the Agency's interest in the so-called "high governmental committee" and the actions attributed to the late Lt.-Gen. Hussein Kamel, centred on the Agency's attempt to locate documentary evidence supporting Iraq's declaration that it had abandoned its clandestine nuclear programme. It was further explained that IAEA had hoped to locate an Iraqi Government decree formally abandoning the programme but had been advised that no such decree existed. The matter was followed up in a written request to Mr. Aziz to determine whether any official Iraqi document existed to record a government-level decision to abandon the clandestine nuclear programme.

28. The opportunity was also taken to explain that a shift of focus to ongoing monitoring and verification activities would not result in a non-intrusive inspection regime. It was made clear that the technical activities employed by IAEA in its inspections of Iraq's clandestine nuclear programme were essentially the same as those employed in the Agency's OMV activities. It was clarified, however, that IAEA had long experience in technical inspection activities and was mindful of the need to minimize the disturbance to Iraq's industrial and

technical activities that might result from OMV activities, without compromising the effectiveness of those activities. To this end, IAEA had held several discussions with the Iraqi counterpart to encourage it to examine its own activities - with particular respect to escorts - to assist IAEA in carrying out its OMV activities with minimum disturbance to the operation of the facilities under inspection.

Iraq's full, final and complete declaration

29. On 25 March 1998, Iraq provided to IAEA a computer disk containing its full, final and complete declaration, along with annexes and addenda, consolidating the text of the version dated 7 September 1996 and the revisions and additions resulting from subsequent technical discussions between IAEA and the Iraqi counterpart. The consolidation of the full, final and complete declaration, which was an editorial task, brought together into one document information provided by the Iraqi counterpart and previously examined by IAEA, in particular during technical team visits in February, May and July 1997.

Summary of technical achievements

30. As previously reported, it was agreed during the December 1997 visit (para. 19 refers) that Iraq would produce a document summarizing the technical achievements of its clandestine nuclear programme. It was further agreed that an IAEA technical team would meet with the Iraqi counterpart, in Baghdad, to review and assess the document so produced. The first version of the document was received in Vienna on 5 February 1998 and was found to require considerable revisions and additions which were brought to the attention of the Iraqi counterpart during a series of technical discussions held in Baghdad from 14 to 19 February. Iraq responded to these discussions by producing a significantly improved document, which was received in Vienna on 13 March 1998. This second document was subjected to a detailed technical review during a second series of discussions held in Baghdad from 26 March to 4 April. As a result of this review, the Iraqi counterpart produced a document containing a summary of the technical achievements of its clandestine nuclear programme which is regarded by IAEA to be consistent with the technically coherent picture of Iraq's clandestine nuclear programme, developed by IAEA in the course of its activities in Iraq.

Summary

31. IAEA continues its programme to update the technology used in its monitoring activities and to extend the range of those activities. A component of this latter aspect is the completion of the baseline survey focused on environmental tritium concentrations. Work in other areas of technology is being actively pursued with the help of Member States. In keeping with the ongoing expansion of IAEA technical activities, the staffing of the IAEA Nuclear Monitoring Group has been increased through the provision of additional personnel resources from Member States.

32. During the period from 26 March to 3 April 1998, 15 IAEA experts participated in the special group, established under the memorandum of understanding agreed between the Secretary-General and the Government of Iraq on

23 February 1998, for the purpose of making entry to Iraq's presidential sites. The surveys undertaken by the special group were completed efficiently and were, in most instances, facilitated by practical cooperation provided by the Iraqi counterpart. The surveys conducted at the eight presidential sites revealed no immediate indications of the presence of prohibited materials or equipment or of the conduct of prohibited activities with respect to the mandate of IAEA under the relevant Security Council resolutions.

33. The Agency's ongoing monitoring and verification activities carried out since October 1997 have not revealed indications of the existence in Iraq of prohibited equipment or materials or of the conduct of prohibited activities.

34. Iraq has satisfactorily completed its undertaking to produce a consolidated version of its full, final and complete declaration of its clandestine nuclear programme.

35. The Iraqi counterpart has fulfilled its obligation to produce a document containing a summary of the technical achievements of its clandestine nuclear programme. The summary is regarded by IAEA to be consistent with the technically coherent picture of Iraq's clandestine nuclear programme developed by IAEA in the course of its activities in Iraq.

36. As previously reported, IAEA is focusing most of its resources on the implementation and strengthening of the technical content of its activities under the OMV plan. IAEA will, however, continue to exercise its right to investigate any aspect of Iraq's clandestine nuclear programme, in particular through the follow-up of any new information developed by IAEA or provided by Member States, and to destroy, remove or render harmless any prohibited items discovered through such investigations.

37. In carrying out its activities in Iraq, IAEA has benefited from the assistance and cooperation of the United Nations Special Commission and, in particular, from the support of certain IAEA Member States which have provided technical personnel resources, access to advanced technologies and access to information.

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LETTER DATED 8 APRIL 1998 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to Security Council resolution 1160 (1998) of 31 March 1998, in paragraph 14 of which the Council requested me to keep it regularly informed and to report on the situation in Kosovo and the implementation of the resolution no later than 30 days following the adoption of the resolution and every 30 days thereafter.

In this regard, you will recall that, on 10 March 1998, the Secretariat informed the members of the Council that the United Nations did not have a political presence in Kosovo that would enable it to provide first-hand information on the situation in the area. Such United Nations personnel as there is is devoted exclusively to humanitarian assistance. As there has been no change in this regard, the Secretariat is still not in a position to independently assess the situation on the ground and to report to the Council thereon.

By means of the present letter, I should therefore like to inform the Security Council that, in discharging this part of my mandate, as well as in assessing whether the Government of the Federal Republic of Yugoslavia has complied in a constructive manner with conditions put forward by the Contact Group, I shall be relying exclusively on the information and assessments of the Contact Group, the Organization for Security and Cooperation in Europe (OSCE) and the European Union, as foreseen in paragraph 16 of the above-mentioned resolution. To this end, I have already sent requests for their cooperation to the Coordinator of the Contact Group, to the Chairman-in-Office of OSCE and to the Presidency of the European Union.

I should be grateful if you would convey this information to the members of the Security Council.

(Signed) Kofi A. ANNAN

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LETTER DATED 9 APRIL 1998 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to tranmit to you herewith a letter dated 9 April 1998 from the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina (see annex).

I should be grateful if you would bring this letter to the attention of the members of the Security Council.

(Signed) Kofi A. ANNAN

98-10045 (E) 140498

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Annex

Letter dated 9 April 1998 from the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina addressed to the Secretary-General

I have the honour to transmit to you the ninth report on the activities of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina. I would appreciate your making this report available to the Security Council.

(Signed) Carlos WESTENDORP

Appendix

Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General

I. INTRODUCTION

1. By its resolution 1112 (1997) of 12 June 1997, the Security Council endorsed my appointment as High Representative and reaffirmed the importance of the role of the High Representative "in monitoring the implementation of the Peace Agreement and giving guidance to and coordinating the activities of the civilian organizations and agencies involved in assisting the parties to implement the Peace Agreement".

2. Pursuant to Security Council resolution 1031 (1995) of 15 December 1995, in which the Council requested the Secretary-General to submit reports from the High Representative in accordance with Annex 10 of the Peace Agreement and conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present the ninth report to the Council.

3. The report covers the activities of the Office of the High Representative and developments in the areas listed below during the period from the beginning of January 1998 to the end of March 1998.

II. INSTITUTIONAL ASPECTS

Office of the High Representative

4. The period under review was productive in many respects, primarily in the encouragement of normal life in Bosnia and Herzegovina and the establishment of peace and stability in the country. Substantial progress has been made in enhancing the climate of reconciliation and tolerance, ensuring freedom of movement, and minority returns. Positive results also include arrangements on a common passport, flag, licence plates, currency, etc. The situation in the Republika Srpska was particularly much improved and the new Government there made a profound difference to our dealings with this entity. Thus, the programme of action approved at the Bonn Peace Implementation Conference of 9 and 10 December 1997 is working effectively - further embedding the peace settlement. However, the peace process has not yet become irreversible and a number of critical problems remain: tension around Brcko, complications in implementing the results of municipal elections; strained relations between Bosniaks and Croats especially in Mostar and Central Bosnia, among other difficulties. I was using the powers given to me by the Bonn Conference in a moderate way in order to avoid "a dependency syndrome" which might discourage initiative and the taking of responsibility by the Bosnia and Herzegovina authorities for the country's destiny.

5. Therefore, now as never before, the task of making Bosnian common institutions self-sustaining and self-supporting becomes extremely important. Only well coordinated and constructive work of the representatives of all the

constituent peoples within the framework of their power structures will make possible the solving of the complicated problems which Bosnia and Herzegovina faces. In this respect the next few months will be crucial in the lead-up to the general elections in September which will guide the direction of the country for the next four years. I intend to proceed from the assumption that the positive dynamics which have been achieved can be preserved and further taken forward through the consistent realization of the requirements of the Bonn Conference which clearly outlined the parameters for the involvement of the international community in Bosnia and Herzegovina for the remainder of the consolidation period. The nurturing of self-sustaining common structures committed to in the Peace Agreement remains a central task.

6. My headquarters in Sarajevo and the secretariat in Brussels have, in the period under review, continued to maintain operational coordination of civilian implementation activities inside Bosnia and Herzegovina, as well as contacts with the headquarters of the respective implementation organizations and agencies, closely following, to the extent possible, the various international forums dealing with different aspects of the Bosnian peace process.

7. My regional offices in Mostar, Tuzla and Banja Luka continued to promote regional coordination and monitoring of the situation on the ground and to facilitate contacts at a local level, assisting inter-entity cooperation. Given the positive developments in the Republika Srpska I intend to further strengthen the regional offices in Banja Luka.

8. During the period described, the termination of assignments of the majority of international staff seconded to the Office of the High Representative by the respective Governments resulted in substantial personnel turnover. The capacity achieved by my Office to conduct pro-active and follow-up action could be further developed if countries that contribute personnel maintained their current level of commitment. I am thankful to the Governments who have replaced or extended the terms of duty of the staff and hope that steady contribution in this regard will be maintained.

Peace Implementation Council

9. The Steering Board of the Peace Implementation Council has continued to meet on a monthly basis at the level of political directors of respective Foreign Ministries. I have also convened weekly meetings of the Board at the ambassadorial level in Sarajevo. Each monthly meeting was devoted to specific issues of the peace process, special emphasis being placed on the implementation of the Bonn Conclusions. Thus, the meeting held in Brussels on 29 January concentrated on Brcko and municipal elections implementation and future elections, while the meeting on 27 February focused on the Federation. A further meeting on 26 March in Brussels dealt primarily with reconstruction and return issues. Preparations are already under way for the next mid-term Ministerial Steering Board meeting, to be held in Paris in June.

Brcko dispute

10. One of the most contentious and publicly debated issues in the reporting period has been the Brcko Arbitration. After the Vienna hearings in February,

the Tribunal issued a Supplemental Award for Brcko on 15 March which maintains the current status quo under the present international supervision arrangements and defers a final arbitration award to the end of 1998-early 1999. Although blamed by politicians and public in both entities for being inconclusive, the Supplemental Award did not lead to "spontaneous" expressions of dissatisfaction. The Republika Srpska decided to set up a special government commission with Bosniak participation to ensure implementation of the Award as regards refugee return and restoration of Brcko as a multi-ethnic community. The further development of the multi-ethnic police, judiciary and administration in Brcko has continued. Particular success has been achieved with the police, this being due to the high standard of the work of the International Police Task Force (IPTF) and the United Nations Civil Affairs Office. The return of refugees and displaced persons has continued and now over 800 families are back in their homes, with over 1,000 houses under reconstruction. Freedom of movement is improving both for vehicles and for visitors to Brcko town. Some increase in the amount of financial assistance is now apparent, but more will be required if a full revitalization of the economy of Brcko is to happen.

11. The way ahead for Brcko will now be a strengthened determination by both entities to be seen to comply with the Peace Agreement. The onus is now very much on the new Government of Republika Srpska to deliver a significantly higher level of cooperation with the international community than did its predecessor. The Federation will increase its pressure to ensure that it does. An active campaign to return more people to their homes will only succeed well if a two-way return process develops and, whilst Republika Srpska must do more, the Federation must also improve in this requirement. The multi-ethnic nature of Brcko will need to continue to develop, but this will depend upon the revitalization of the economy to bring more jobs and security to the population.

III. COORDINATION OF CIVILIAN IMPLEMENTATION

Overall coordination

12. I have continued extensive consultations with representatives of Governments and organizations at different levels. On 9 February I met the Secretary-General and other senior United Nations officials in New York and on the same day reported to the members of the Security Council on progress in the peace implementation. I also had meetings with the Secretary General of NATO and the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE).

13. Regular discussions with the principals in Sarajevo have been maintained. These consultations, with the participation of the Special Representative of the Secretary-General, the IPTF Commissioner, the Special Envoy of the United Nations High Commissioner for Refugees, the Commander of the Stabilization Force (SFOR) and the OSCE Head of Mission, proved to be very useful and I shall continue them.

14. The Economic Task Force, which meets under my chairmanship, remains the main body for coordinating economic reform policies and international reconstruction assistance. Recently its role has been strengthened by the

establishment of an Economic Task Force secretariat. This secretariat has initiated monthly meetings with sector task force leaders and bilateral donors in order to improve the level of coordination. Also, it publishes a monthly newsletter to keep the international community informed on economic reform and reconstruction issues.

15. Following the appointment of my Deputy with responsibility for Return and Reconstruction Task Force matters, the Return and Reconstruction Task Force has been restructured and relaunched. The representatives of the International Organization for Migration, SFOR and the United Nations Mission in Bosnia and Herzegovina (UNMIBH) are all now full members of the Task Force, and following the approval of the Steering Board on 26 March a secretariat is being established. A high-level Return and Reconstruction Task Force meeting was held in Sarajevo on 19 March. This meeting agreed the overall return strategy for 1998, and endorsed a paper which will be presented to the next donor conference. Regional Task Force structures have already been strengthened and a satellite office opened in Drvar. In close cooperation with the Office of the United Nations High Commissioner for Refugees substantial support has been given through political interventions to assist the local authorities with the preparation of cantonal return plans as required by the Bonn Conference.

16. The Freedom of Movement Task Force has continued to be a valuable forum for exploring various ways to promote freedom of movement for people, goods and services.

Common institutions of Bosnia and Herzegovina

17. The process of establishing the common institutions of Bosnia and Herzegovina proceeds steadily. The Presidency, the Council of Ministers and the Parliamentary Assembly have continued to meet regularly in the reporting period. However, the efficiency of their work, although it has improved, is still hindered by a lack of political will to take decisions. My Office intends to work intensively on reaching agreement on administrative structures and their permanent locations.

18. In the reporting period, the Presidency held few working sessions, but met frequently with high-ranking international delegations. The results of the working meetings have been limited; the only decision of note is the long-awaited appointment of the 33 new Ambassadors of Bosnia and Herzegovina. This follows the agreement of August 1997 on the distribution of ambassadorial posts.

19. The three-member Presidency failed to agree on several crucial issues, most prominent of which was the common currency, which, as a consequence, I was forced to impose in accordance with the Conclusions of the Bonn Conference.

20. The Council of Ministers on various occasions again referred issues to the Presidency upon which it was unable to agree. This was often a function of the lack of clear procedures governing the Council itself, and of the differing interpretations of the respective areas of competence of these two bodies. This practice weakened the political position of the Council, which should serve as the major policy and decision-making organ at the state level. The Council

nonetheless continued to stand out as the most active of the common institutions, meeting on average at least once weekly.

21. During the period under review, the Council continued its efforts to implement the Law on Travel Documents and on the Council of Ministers. On 26 March, the Council took a significant step forward by accepting in its entirety a package my Office had proposed, which offers clear solutions on the three key issues of permanent locations of the Council and its ministries, the staffing of the Council's services and the internal structures of the three Ministries. The Council must also ensure proper implementation of the Law on Citizenship which I imposed on an interim basis last December. Progress on other issues has been slow.

22. My Office will continue to work intensively with Council members and staff to maintain the positive momentum. This is particularly necessary when one notes the failure of the Council to meet important Bonn deadlines which must be fully respected to avoid negative consequences for the implementation process.

23. In the reporting period, both houses of the Parliamentary Assembly continued to meet regularly. However, it failed to adopt several important laws. As a consequence I decided to enforce the Law on Foreign Investment and the Law on the Flag of Bosnia and Herzegovina.

24. The latter of the aforementioned laws has brought into force a new state flag for Bosnia and Herzegovina. The new flag was raised at the United Nations in New York on 6 February and at the opening ceremony of the Winter Olympics in Nagano, Japan. The flag was designed by an independent commission which I established following the failure of the ruling parties to reach consensus. The flag has been well received by the public and can be seen in increasing numbers around the country.

25. The Parliamentary Assembly did manage to fulfil several obligations stemming from the Bonn Conclusions by adopting the Law on Customs Tariffs and ratifying several agreements most prominent of which was the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

26. The judges of the Constitutional Court pursue their work with efficiency and professionalism. The judges participated in the Round Table on Constitutional Justice, at which experts and judges of the constitutional courts of both entities and from abroad also took part. However, so far the Bosnia and Herzegovina authorities have not made any resources available to the Constitutional Court of Bosnia and Herzegovina.

27. The Standing Committee for Military Matters held its fifth session on 11 February in Sarajevo at which NATO's Bosnia Task Force made a presentation on the proposed Security Cooperation Programme. The Committee endorsed two joint statements - on the way ahead for military representation overseas, and on the Mines and Ordnance Amnesty.

28. My Military Adviser has now handed over the chair of the secretariat of the Standing Committee for Military Matters which consists of the three Presidential

Military Advisers, to a new coordinator appointed in February to develop the Standing Committee for Military Matters and its secretariat further. The ultimate aim is to make the secretariat, and thereby the Committee, self-sustaining. In March the members of the secretariat paid a successful visit to London where they had meetings in the Ministry of Defence, Foreign Office and Houses of Parliament; the important themes of democratic control over armed forces and Western approaches to arms control were discussed during the meetings. Plans are now being drawn up to strengthen the secretariat with more resources. Work is also being carried out to identify future work areas. Unfortunately the sixth session of the Standing Committee for Military Matters, scheduled for 31 March at Lukavica in the Republika Srpska, was not held owing to a protocol dispute over the positioning of the new flag of Bosnia and Herzegovina.

Essential legislation

29. My Office, together with representatives of the relevant state and entity ministries and international organizations, is working on legislation in the field of telecommunications, civil aviation and immigration. The appropriate draft laws will be forwarded to the Council of Ministers shortly. My Office and the Council of Europe are also assisting the entities in elaborating harmonized citizenship legislations. Since the beginning of March my Office is coordinating the drafting of a number of commercial laws by USAID and the European Commission.

30. Although the forthcoming general elections will still be held under the Rules and Regulations of the Provisional Election Commission, a draft Election Law for Bosnia and Herzegovina has been elaborated by my Office together with OSCE and the Council of Europe and will be presented to the Bosnia and Herzegovina authorities shortly.

31. My Office continues to be actively involved in media issues. An interim regulatory and disciplinary body, the Intermediate Standards and Licensing Commission is being established by my Office to regulate all media in Bosnia and Herzegovina, including broadcast, print and emerging electronic outlets. Additionally, it will require all broadcasters across the whole of Bosnia and Herzegovina to be licensed to a set of minimum structural and editorial standards of broadcasting. This will include a judicial body with powers of sanction to ensure compliance. The Commission will be staffed by local and international experts and officials and will include representatives of both entities and state.

32. The Bosnia and Herzegovina education authorities should cooperate with the entities in the field of higher education, particularly encouraging enrolment of students from throughout Bosnia and Herzegovina and cooperating with the entity authorities on the issue of financing. In this field, they should ensure academic freedom and self-government of institutions, promote the adequate graduation of trained professionals, and encourage the role of universities as a locus of peaceful inter-group dialogue.

Special parallel relationships and succession issues

33. The Special Parallel Relationship Agreements, respectively, between the Federal Republic of Yugoslavia and the Republika Srpska, and between the Republic of Croatia and the Federation of Bosnia and Herzegovina have still not been aligned with the Peace Agreement and the Bosnia and Herzegovina Constitution. My Office has urged the parties to immediately resume the activities of respective working groups, which my Office established in 1997.

34. Discussions on succession issues were held with all five States at plenary meetings in Brussels from 4 to 6 February and from 25 to 27 March under the chairmanship of the Special Negotiator for Succession Issues. They focused on a possible agreement on certain specific succession issues such as archives, citizenship, pensions, treaties and acquired rights as well as on possible distribution of diplomatic and consular properties and some financial assets of the former Socialist Federal Republic of Yugoslavia abroad. A compromise package was submitted to the five States by the Special Negotiator on which their response is expected by the end of April. The Conclusions of the Bonn Conference, namely access to records and data relevant to the settlement of succession issues, were also discussed.

35. Other outstanding succession issues in the broader draft Framework Agreement submitted last November by the Special Negotiator will also need to be addressed in the future, as will the future course of the negotiations on these issues.

Joint commissions

36. Activities of the Provisional Election Commission (Annex 3), chaired by OSCE, are referred to in the elections sections of this report.

37. My Office is encouraged by progress made in recent months towards the goal of securing adequate and stable funding for the Human Rights Chamber, the Human Rights Ombudsperson and the Commission for Real Property Claims. In response to my proposal to the Steering Board of the Peace Implementation Conference, the two largest donors (the European Union and the United States of America) have pledged the full amount suggested under the funding key, and a number of other Governments have made substantial contributions to the 1998 budgets of the institutions. However, the commitment by the Bosnia and Herzegovina Government to contribute DM 200,000 to each institution from its 1997 budget has not yet been met. This failure is all the more troubling given that the contribution of the Bosnia and Herzegovina Government is expected to increase incrementally with a view to assuming full responsibility by the end of the five-year transition period, as underscored by the Bonn Conclusions.

38. While the caseload of the three institutions is continuing to expand, there is still a serious lack of cooperation on the part of the authorities in ensuring that the decisions and recommendations of these institutions are effectively implemented. Mechanisms to ensure respect for the final and binding decisions of the Human Rights Chamber and the Commission for Real Property Claims as well as implementation of recommendations by the Ombudsperson and the Federation Ombudsmen should be strengthened. My Office is actively involved in

monitoring authorities' responses and coordinating intervention in cases in which the authorities have failed to meet their obligations. The drafting of implementing legislation for the Commission for Real Property Claims is under way and legislation on behalf of the Commission on Human Rights may also be necessary. Coordination among the institutions has improved and measurable progress has been made in terms of the institutions' impact in contributing to the respect for human rights and the rule of law in Bosnia and Herzegovina.

39. At its seventh session held in Banja Luka on 11 March the Commission to Preserve National Monuments in Bosnia and Herzegovina (Annex 8) has continued its important work relating to the question of the restoration of cultural heritage in Bosnia and Herzegovina. In particular, the Commission extended its selection of monuments and sites to 70 properties in both entities.

40. Significant progress has been achieved by the Commission on Public Corporations in the implementation of Annex 9 of the Peace Agreement, especially in the organization and the operation of railways: inter-entity rail traffic has resumed, albeit not regularly, and the Federation of Bosnia and Herzegovina and the Republika Srpska have recently signed an agreement establishing a joint railway Public Corporation as part of the Transportation Corporation. There also appears to be political will to create other joint public corporations: work is continuing in the field of power (particularly transmission) and discussions are taking place in other sectors. My Office remains involved in this matter and actively supports the work of the Commission.

Elections

41. Since my last report, preparations for the 1998 general elections have begun under the supervision of the Provisional Election Commission. On 11 March, the Commission agreed that elections will be held on 12 and 13 September for all levels of government with the exception of the municipal level. However, elections will also be held for the 10 new municipalities in the Federation of Bosnia and Herzegovina that have been constituted in accordance with the recently adopted Law on Split and New Municipalities.

42. The membership of the Provisional Election Commission has been expanded to include three additional, non-party- or government-affiliated members and their deputies. This should bring more transparency to the electoral process and diversify the discussions of the Commission.

43. The Provisional Election Commission has amended its rules pertaining to membership in the local election commissions and is currently working on amendments to the rules regulating political party and coalition registration. The intent of these rules is to limit the number of frivolous parties participating in the electoral process, to require parties to produce political platforms that specify issues and adhere to the principles of the Peace Agreement, and to provide more flexible coalition arrangements that will allow opposition parties to establish themselves in the political landscape. While the regulatory work of the Commission is moving forward, much still needs to be completed in time for voter registration.

44. In parallel with the preparation for general elections, the reporting period has seen an intensive joint effort on the part of my Office and OSCE to mediate in a large number of municipalities which had failed to meet the criteria for final certification. It was agreed at the Bonn Conference that municipalities where the requirements have not been fulfilled will be submitted to OSCE and my Office for final and binding arbitration. Despite our mediation efforts, nine municipalities had to be arbitrated.

45. The following municipalities went to arbitration: Bosanski Brod, Foca, Gornji Vakuf, Kresevo, Novi Travnik, Prozor, Srebrenica, Stolac and Zepce. As of the end of March the municipalities of Foca, Kresevo, Prozor and Srebrencia have not implemented the arbitration awards. The arbitration awards are final and binding and not open to appeal.

46. There is a continuing need to monitor the implementation of the municipal election results. In the light of this, a decision was adopted in the Provisional Election Commission whereby the OSCE Head of Mission, in his capacity as Chairman of the Provisional Election Commission, will retain, for a period of six months after final certification, the discretion to revoke final certification from a municipality if it violates the rules and regulations or acceptable conditions.

Federation issues

47. My Office continued to focus attention on Federation issues.

48. Following the arbitration of my Office on the establishment of the new municipality of Usora, the Law on Split and New Municipalities was adopted by the Parliamentary Assembly in January. The adoption of this law had been blocked for nearly a year and was a cause of serious disputes between the Party of Democratic Action (SDA) and the Croatian Democratic Union (HDZ) which hindered progress on other important issues.

49. The Parliamentary Assembly has, in addition, finally adopted the housing and property legislation package, bringing it into line with Annex 7 (the Law regulating Application of the Law on Temporarily Abandoned Real Property Owned by Citizens, the Law on Cessation of the Application of the Law on Abandoned Apartments and the Law on Taking Over the Law on Housing Relations). Implementation of these laws will now have to be carefully monitored and, if necessary, guided.

50. Through the intensive mediation of OSCE and my Office the 1997 municipal election results have by March been successfully implemented. Several Federation municipalities will have to be monitored to ensure observation of inter-party agreements. It is hoped that the establishment of fully functioning municipal authorities, representing both domestic and displaced residents, will play an important role in the return process in the Federation.

51. The political and security situation in the Federation continued to improve overall, despite security incidents and the lack of substantial progress in the field of returns. The successful establishment of a joint police force in most

of the cantons and recent progress in reforming the judicial systems in the two cantons with a special regime has contributed to this atmosphere.

52. There is still evidence that structures of the "Republic of Bosnia and Herzegovina" and the "Croat Republic of Herceg-Bosna" continue to operate despite the fact that they should have been disbanded following the establishment of Federation structures and common institutions of Bosnia and Herzegovina. My Office will continue its efforts to disband these parallel structures.

Republika Srpska

53. During the period under review, significant political developments have taken place in the Republika Srpska. The new Government headed by Prime Minister Dodik came to power on 18 January at the second session of the National Assembly of the Republika Srpska, elected by a majority of deputies including those having mostly been elected by displaced persons in the Federation. The new Government was elected only after the former Pale-based leadership, through the deputies of the Serbian Democratic Party (SDS) and the Serbian Radical Party (SRS), had exhausted all means and possibilities of obstructing the vote. The election of a new Government represents a major democratization step in the Republika Srpska and likely a turning point for the overall implementation of the Peace Agreement.

54. Owing not least to efforts by my Office, in close cooperation with SFOR and IPTF, the election of the new Government did not lead to a much feared split of the Republika Srpska into western and eastern parts nor to any active resistance to it on the ground. With appropriate persuasion applied by my Office, both SDS (which lost power for the first time since its establishment almost eight years ago) and SRS decided not to opt for confrontation, but to assume the role of opposition parties.

55. Although the new Government, which continues to be purely Serb, has only been in office for little more than two months, it has already demonstrated its resolve to undertake serious implementation efforts and improve inter-entity cooperation. It has also started to address the serious social and economic situation in the entity. Thanks to short-term budgetary support received from international donors, whose release is administered and monitored by my Office, the Government has managed to calm social tensions by paying long-standing salaries to several categories of public employees.

56. By the end of March, the Government established full control over military, police, judiciary and customs authorities as well as the public prosecutor's office. The most recent arrests of former customs officials and businessmen charged with customs fraud and tax evasion represent a clear intention to fight corruption and organized smuggling.

57. My Office provided some support to the new National Assembly of the Republika Srpska in order to foster democratic practice and pluralism in the Republika Srpska. In the reporting period, the Assembly held four sessions. Despite its fairly fragile majority, the government coalition managed to adopt several important decisions including the annulment of all laws adopted by the

previous National Assembly since its official dissolution by Republika Srpska President Plavsic in July 1997. The budget was also adopted as well as a decision on the change of the seat of government and its institutions from Pale to Banja Luka.

Media

58. My media strategy, which is based on three pillars, namely, (1) editorial intervention and media restructuring and regulation, (2) encouragement of independent media and the provision of alternative sources of information, and (3) an extensive public service information campaign, is now fully under way. Our primary aim is to break the monolithic control of media by government and political parties and to reorganize the media landscape in line with internationally recognized standards. Political control of information has starved the population of Bosnia and Herzegovina of the knowledge necessary to make informed judgements on the peace process. Redressing the balance of access to objective information is my most urgent priority in the run up to the September elections, and I believe our most effective means of accomplishing this is support for this media strategy. It has to be stressed that adequate funding of the strategy is urgently needed.

59. As regards the first pillar of my strategy, the situation with Srpska Radio Television (SRT) has improved dramatically during the reporting period. The restructuring of SRT is proceeding successfully and in accordance with the Restructuring Agreement signed by the Republika Srpska. The International Administrator is in place and receiving good cooperation. One of the first indications of this cooperation was the return of equipment removed from Veliki Zep. Talks are currently under way to ensure the security of the transmission sites which will allow for a withdrawal of the SFOR troops from those locations. In addition, the re-establishment of the entire SRT system has taken place with direct links to regional studios, including Pale, again operational. The new SRT Board of Governors recently appointed by the National Assembly in accordance with the model recommended by my Office has adopted the SRT statute.

60. Following the success with the restructuring of SRT in the Republika Srpska, the concentration of this effort will now be extended to the Federation. The plan for restructuring Radio Television Bosnia and Herzegovina (RTV BH) has already begun. Initial meetings have taken place with representatives of both the main communities of the Federation with the aim of establishing a new Federation television network based on a reorganized RTV BH which also enfranchises the Croat opinion. It is also intended to engineer a third channel which will form a cooperative venture between the new Federation television and SRT that will create a genuine Bosnia and Herzegovina-wide television public service broadcaster.

61. The Intermediate Media Standards and Licensing Commission will deal with the broader issue of regulation of the media in Bosnia and Herzegovina. It will aim to ensure that all broadcasters and media outlets will conform to a set of minimum standards based on western democratic principles. The establishment of this Commission is moving forward on schedule. A high-calibre team of expert media consultants have been appointed to put together the necessary structure. The Licensing Sub-Commission will be the first element to be established. The

absorption of the OSCE Media Experts Commission will take place in a phased fashion in consultation with OSCE. The Intermediate Media Standards and Licensing Commission will remain in operation until a permanent statutory commission or commissions are established under new entity and state laws on media and telecommunications. In the interim, the Standards and Licensing Commission will also be responsible for managing the transition to these statutory structures and in the development of the necessary laws.

62. Concerning the second pillar of my strategy, the largest and most ambitious independent media project is the Open Broadcast Network. A number of independent surveys and research work, notably the Prism Research survey commissioned by USAID, have found Open Broadcast Network to be making a serious impact on the television scene in Bosnia and Herzegovina. Moreover, its political relevance has been highlighted through statements by both Croatian leaders and opposition politicians who acknowledge that the Network is one of few outlets available for political debate outside the stranglehold of the leading nationalist political parties. The biggest problem facing the Network now is that of the unpredictability of funding flow. However indications are that there is an increasing understanding in the international community of the urgent need to keep this project afloat and I expect a healthy response to outstanding funding requirements at the next media pledging meeting.

63. The Public Service Information Campaign makes up the third pillar of my strategy. The intention is to provide clear information, unfettered by political dogma, to the whole population of Bosnia and Herzegovina. The production elements are currently under way, with a team in theatre and working closely with the international organizations. Preparation of the first pilot programme and advertising strand is ongoing and completion of this phase is expected soon.

Return of refugees and displaced persons

64. One of the major achievements during the reporting period was the Sarajevo Return Conference held in February under the joint chairmanship of my Office, the United States Government and the European Commission. The Conference agreed on concrete steps to be taken by the authorities and the international community to make Sarajevo a model canton for minority return and multinational coexistence. While good progress has been made in education, employment and demining, the Bosnia and Herzegovina authorities have failed to deliver in the critical sectors of housing and public security. My Office is considering corrective measures in this regard.

65. Returns to Brcko have made further progress, with reconstruction practically completed in the original six villages designated for the first phase of returns. This phase has targeted previously destroyed areas on the former front lines. The recently established multi-ethnic administration of Brcko has been engaged in the efforts to address the more sophisticated challenge of return close to areas inhabited by displaced persons and to the town itself.

66. A partial return for 8 of 14 municipalities was adopted by the Herzegovina-Neretva Canton government on 20 March. Intensive negotiations to include the

remaining six Mostar city - municipalities in the plan have been to no avail, because of the refusal of the three Croat majority municipalities to cooperate on the basis of the established principles.

67. I am encouraged that Stolac is making some progress on minority return since the Mayor was removed at my request in early March. I am working closely with SFOR and the HDZ leadership to ensure that the sporadic house-burnings that continue to mar the area will be stopped definitively and with immediate effect.

Freedom of movement

68. On 2 February the Uniform Licence Plates system was introduced following a closely coordinated effort by my Office and IPTF. An initial quota of 2,000 plates was issued to both the Federation and the Republika Srpska. In addition my Office and IPTF have worked on a Common Vehicle Registration Document which will be issued with the new licence plates. The second quota of some 200,000 licence plates is being printed and distributed all over the country.

69. The demand and the interest from car owners are enormous, representing a strong desire for full freedom of movement. In spite of the new uniform licence plate not yet being available in sufficient numbers, there has been a noticeable increase of vehicles even with old plates crossing the inter-entity boundary line.

70. Progress on freedom of movement for the Republika Srpska citizens of Bosnia and Herzegovina and displaced Serbs from Croatia in the Republika Srpska across the Bosnia and Herzegovina borders into Croatia has not been satisfactory. This issue has repeatedly been addressed with the Croatian Government which continued to uphold visa and other impediments.

71. On 25 February and 12 March 1998, the third and fourth meetings of the Border Commission were held in Banja Luka and Slavonski Brod. Attention was concentrated on customs and infrastructure. Commendable work on customs issues continues to be done by the European Commission's Customs and Fiscal Assistance Office, with current efforts directed at the opening of border crossings between the Republika Srpska and Croatia for high-duty goods. Provisions of veterinary and phyto-sanitary facilities and restrictions at crossings have also been addressed. Agreement on the opening of the Gradiska crossing for high-duty goods and provision of veterinary examination facilities was reached. Such operations began on 23 March.

72. Infrastructure issues continue to require attention. In the reporting period, my Office has focused its efforts on opening up navigation on the Sava River, resumption of railway traffic between Bosnia and Herzegovina and Croatia and the reconstruction of bridges over the Una and Sava rivers. Protocols and agreements are now being prepared which will improve prospects for freedom of movement of persons and goods.

73. Police restructuring is still not finished in two of the Federation cantons. On 6 February, my Office, jointly with IPTF, set out the concretized implementation procedures to the Federation authorities to finish the process. Also, after its completion in the two remaining cantons, IPTF will have to work

closely with the Federation authorities to further professionalize the police and to further diversify its national composition.

74. Police restructuring in the Republika Srpska is proceeding well, but not at a sufficient pace.

Missing persons, mass graves

75. The issue of missing persons remains very sensitive and is frequently manipulated by different actors for political purposes. The Working Group on Missing Persons, chaired by the International Committee of the Red Cross, continues to make it possible for representatives of the family associations to have direct contact with the relevant local authorities.

76. An important step forward has been made by the Joint Exhumation Commission, chaired by the Office of Human Resources. The Commission, comprising representatives of the three parties, is the principal forum for inter-party exhumations. During March exhumations it has become possible for the first time to work without total reciprocity. The Republika Srpska team started exhumations in Jajce on 2 March, the Croat team began exhumations in the area of Kakanj two days later and the Bosniac team in West Mostar, in the middle of March. The work continues in the same cooperative manner and so far approximately 250 bodies have been exhumed in 20 to 30 micro locations in four main areas since the beginning of March.

77. The exhumations are performed with the help of the international community. Physicians for Human Rights assists with technical and scientific expertise, sponsored by the International Commission on Missing Persons which also provides funds for demining and forensic materials. The United Nations assists with mine assessment visits to the sites and IPTF monitors the local police who are responsible for security at the sites. SFOR provides area security and the possibility for emergency evacuation.

Human rights

78. During the reporting period, there have been numerous incidents of violations of freedom of movement during assessment visits of potential returnees, as well as continued allegations of harassment and intimidation against members of minority groups in all regions. Of particular concern is the situation in Teslic municipality where there have been nine serious allegations of police abuse since the current Chief of Police assumed his position in late October 1997, including five cases since my last report. IPTF has conducted an investigation into these cases as well as allegations of the failure of Teslic local police to respond effectively to other human rights violations, and it is essential that the recommendations included in the IPTF report be fully implemented. Destruction of property and violence directed against returnees and minority residents, in places such as Drvar, Stolac and Travnik, continues to impede return of refugees and displaced persons.

79. Significant advances have been made with respect to property and housing laws. Through the adoption of these laws, the Federation National Assembly has

put in place the essential legal framework for return of refugees and displaced persons to their pre-war homes.

80. The focus in the Federation has now turned to the difficult task of ensuring that these laws are implemented thoroughly and promptly, in a manner fully consistent with their letter and spirit. At the same time, the new Government of Republika Srpska has established a working group to develop property and housing law amendments. Initial drafts have been prepared, and my Office is working with Republika Srpska authorities to ensure that the proposed laws comply with Annex 7 and are consistent with laws adopted within the Federation.

Strengthening the rule of law and cooperation with the International Tribunal for the Former Yugoslavia

81. Judicial system reform remains a priority for 1998. Following the Bonn Conclusions, a number of steps have been taken to ensure accelerated progress in this field, including enhanced coordination of activities by my Office. Effective monitoring of the judicial system is a precondition for this work, and UNMIBH's proposal for additional resources to undertake this critical task is strongly supported.

82. Recent developments have again confirmed that the independence and effectiveness of the judiciary remains compromised by flaws in the judicial appointment process. A comprehensive process is needed to ensure that judicial appointments are based on merit rather than political criteria, and to ensure that all ethnic groups are fairly represented in the judicial system. At the same time, training programmes for legal professionals, including the initiative to establish a judicial training institute for Bosnia and Herzegovina, should be supported. Efforts to establish an inter-entity commission for judicial cooperation have moved forward, with the decision by the Presidency of Bosnia and Herzegovina to establish the Commission. However, the necessary appointments to the Commission have not yet been made, and the Commission is not yet functioning.

83. In January, SFOR troops detained a Bosnian Serb in Bijeljina indicated by the International Tribunal for the Former Yugoslavia for war crimes. At the same time, cooperation with Republika Srpska authorities has increased significantly with the voluntary surrender of three Bosnian Serbs to SFOR troops in February and one Bosnian Serb in March. Nevertheless, two persons subject to publicly disclosed indictments (both Croats) remain at large in the Federation, while 47 Serbs publicly indicted by the Tribunal are not in custody.

84. Federation authorities arrested three Bosnian Serb men during the past month on war crimes charges; one of them was subsequently released when the investigating judge accepted his claim of mistaken identity. In one case, IPTF has issued a report strongly criticizing the manner in which the arrest and interrogation were conducted, and making broad recommendations for reform of police procedures. While these arrests raised concerns under the Rome Agreement (rules of the road), Federation authorities responded promptly to rectify the problems identified. It is essential, however, that both the Federation and the Republika Srpska follow the rules of the road to the letter, including the

requirement that a file must be submitted and a response received from the Tribunal Prosecutor prior to any arrest. My Office will continue to work to ensure full understanding and implementation of the rules of the road in the coming months.

85. My Office also remains actively involved in efforts currently under way to reform the legal framework applicable to non-governmental organizations to establish a proper legal and security environment which supports the development of civil society organizations. Non-governmental organizations are vital to pluralism and democracy and they are important vehicles for communication and cooperation among the communities in the various regions of Bosnia and Herzegovina. The current legal framework hinders the development of such organizations, in particular of those non-governmental organizations which undertake country-wide activities. My Office supports locally based efforts to develop a sound legislative framework which will regulate and stimulate activities of non-governmental organizations such as trade unions, citizens groups, cultural and sports associations in both entities. The authorities of both the Republika Srpska and the Federation have acknowledged the need for such a comprehensive, legislatory framework and have expressed willingness to be supportive of this process.

Economic reform and reconstruction

86. The Bonn Conference demanded that the competent authorities of Bosnia and Herzegovina reach agreement on several relevant issues in the field of economic management. Considerable progress was made regarding the common currency, the Law on Customs Tariffs, the Law on Foreign Investment, and the 1998 budgets of the State and the entities.

87. As the Presidency of Bosnia and Herzegovina could not come to a final agreement on the designs for the common currency, I was compelled to use my mandate for arbitration. The designs for the notes were presented to the public and will be issued as of the beginning of May. The common currency will facilitate trade between the entities, and will contribute to a mutual strengthening of their economies.

88. At my request, the European Union and the Governments of Canada, the Netherlands, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America decided to provide extraordinary budgetary support to the new Government of the Republika Srpska. The funds are used to clear the arrears of salaries in all public sectors except for the Ministries of the Interior and Defence. Contributions received to date amount to about DM 18 million.

89. In the period under review, some important progress has been made on new projects from major donors. The World Bank has started implementation of two projects to which it pledged $27 million. Total costs will amount to $109 million of which $65 million is for reconstruction in the Republika Srpska and $44 million for a gas project in the Federation of Bosnia and Herzegovina. Furthermore, Parliament has ratified an energy project of the European Bank for Reconstruction and Development worth $15 million and a telecommunications project of $20 million is recently approved. The European Commission will sign

contracts on 2 April worth $69 million. These contracts are part of an integrated reconstruction and return programme with total project costs of $141 million. This project will provide new housing for about 20,000 people. Additionally, the European Commission has signed a memorandum of understanding that it will continue the existing demining project of $11 million in 1998, pledging an additional $2.7 million.

90. The 1998 budget of the Republika Srpska was adopted by the National Assembly in March. The budget of the Federation of Bosnia and Herzegovina is about to be adopted by its Parliament. The two budgets have made provisions for the State budget and the servicing of external debt. For both items there are automatic transfers, as demanded by the Bonn Conference, but a final agreement on this issue with the International Monetary Fund is not yet reached.

91. At my instigation the Government of the Republika Srpska has halted the existing privatization programme. The process of privatization was lacking transparency and therefore unacceptable. With the help of several international donor agencies, a new programme is being designed which would facilitate the transition towards a market economy based on private investment.

92. The programme of privatization in the Federation of Bosnia and Herzegovina is still in the preparation phase. However, most of the essential laws have been passed by Parliament. Some doubts have arisen as to the fate of assets which were either socially owned or owned by the State of Bosnia and Herzegovina in its previous internal structure of the Republic of Bosnia and Herzegovina. The purpose of the privatization law is to create a secure legal environment for the privatization process by the two entities.

93. The first post-war delivery of mail from Sarajevo to Banja Luka took place in early February. Further negotiations by my Office led to an agreement on 25 March on the text of a memorandum of understanding concerning the resumption of inter-entity mail transports. The parties stated a strong desire to move forward and to look into options for restructuring the sector.

94. During the reporting period, inter-entity phone links were significantly improved. As a result of the European Commission reconstruction project which created a backbone in the Republika Srpska, three links each of 30 lines were made operational at the end of March. My Office has negotiated for an additional 30 lines between Sarajevo and Banja Luka to become available as from the beginning of April. Also, the Telecommunications Commission has met twice to discuss issues of inter-entity and international telecommunications. Significant progress has also been made in developing a State-level law on telecommunications.

95. In order to complete the new customs legal regime, a new customs code is essential. A working group, with the help of experts from the European Commission Customs and Fiscal Assistance Office, is close to an agreement on a final text for the code. The new code will replace the existing interim Customs Policy Law, and will introduce modern customs procedures based on the existing European Customs Code and other international legislation.

96. As part of efforts in the fight against corruption and diversion of funds in Bosnia and Herzegovina, my Office chaired a conference on this topic in Mons, Belgium. The conference was attended by SFOR, NATO, IPTF, the European Commission, the World Bank, the United States Treasury, and USAID and focused on the areas to be strengthened. My Office intends to activate its anti-fraud unit, mainly tasked to support the judicial authorities in dealing with corruption cases.

97. In May the fourth donor conference for Bosnia and Herzegovina could be held, if preconditions including a letter of intent on a stand-by agreement from the International Monetary Fund are fulfilled. The Conference will be organized by the European Commission and the World Bank. The target set for international aid at the end of the war was $5.1 billion. At the previous three Conferences, donors pledged a total of $3.4 billion. I am confident that the upcoming conference will show a continued willingness of the international community to support the peace process.

98. Recently, my economic department has renewed the initiative of bringing representatives of the two entities together regarding trade within the whole of Bosnia and Herzegovina. So far, incompatible tax systems and a lack of coordination have damaged trade and resulted in evasion of taxes. Policy coordination should result in restored trade relations which will benefit both the Federation and the Republika Srpska.

Civil aviation

99. There is some encouraging progress in civil aviation. More air companies from European countries are preparing to fly into airports in Bosnia and Herzegovina. Arrangements between the authorities of Bosnia and Herzegovina and the Federal Republic of Yugoslavia and commercial companies have led to Yugoslav Airlines flying to Banja Luka, as well as Yugoslav and Bosnia and Herzegovina air companies preparing joint ventures between Belgrade, Sarajevo and Banja Luka and between Podgorica and Sarajevo. On 2 March, the Department of Civil Aviation of Bosnia and Herzegovina signed a bilateral agreement with Eurocontrol regarding overflight charges. As soon as respective rules are published in the Official Gazette of Bosnia and Herzegovina, Eurocontrol will begin the collection and distribution of fees. The average income for Bosnia and Herzegovina is assessed to be about US$ 100,000 a month.

100. Despite extensive discussions and insistence by my Office, the Bosniac and Bosnian Croat authorities could not find agreement on the modalities for opening Mostar Airport. I have therefore imposed an interim solution in order to allow for the opening of the airport in April for a period of six months. I shall continue to press the parties to come to a permanent agreement within this time. It is inconceivable that the international community should provide money to help reconstruct Mostar while commercial opportunities are being thrown away.

Mine clearance

101. In response to the requirements of the Bonn Conference on landmines the Federation and the Republika Srpska confirmed their full compliance in relation to the anti-personnel mines. The Board of Donors has decided that in order to

ensure international donor confidence on demining in Bosnia and Herzegovina, the authorities need to commit themselves on all landmines. Further clarification is being pursued.

102. The Board of Donors has approved the Decree on the Establishment of the Federation Mine Action Centre. The Federation has now adopted the Board's draft decree with some minor amendments and its official publication is expected shortly.

103. The Government of the Republika Srpska has still not produced its Mine Action Centre Decree and the Office of the High Representative is taking measures to ensure its adoption.

104. Through the Board of Donors, there is now much improved coordination between SFOR and civilian demining. In particular, SFOR is participating fully in the formulation of the entity mine action plans and ensuring that entity forces mine removal enhances civilian demining programmes.

IV. COOPERATION WITH THE STABILIZATION FORCE

105. As the pace of civil implementation increases, my Office and SFOR continue to work ever more closely together further enhancing their mutual cooperation. The decision of the NATO Atlantic Council to extend the mandate of SFOR has been instrumental in enabling all civilian agencies to make firm plans for 1998. The secure environment that SFOR provides is the sine qua non of all current progress, and is likely to remain so. Overall cooperation with, and support from, SFOR continues to be outstanding.

UNITED NATIONS **S**

Security Council

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9 April 1998

ORIGINAL: ENGLISH AND FRENCH

LETTER DATED 9 APRIL 1998 FROM THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to inform you that today, 9 April 1998, the International Court of Justice, pursuant to article 41 of the Statute of the Court, made an Order indicating provisional measures in the case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America).

The Order was read at a public sitting by the Vice-President of the Court, Acting President.

The operative paragraph reads as follows:

"For these reasons,

"THE COURT

"Unanimously,

"I. Indicates the following provisional measures:

"The United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

"II. Decides, that, until the Court has given its final judgment, it shall remain seized of the matters which form the subject-matter of this Order."

President Schwebel and Judges Oda and Koroma appended declarations to the Order.

In accordance with article 41, paragraph 2, of the Statute and article 77 of the Rules, I transmit herewith the full text of the Order in French and English, the latter being the authoritative language.

(Signed) Eduardo VALENCIA-OSPINA
Registrar

9 APRIL 1998

ORDER

CASE CONCERNING THE VIENNA CONVENTION
ON CONSULAR RELATIONS

(PARAGUAY v. UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

AFFAIRE RELATIVE A LA CONVENTION DE VIENNE
SUR LES RELATIONS CONSULAIRES

(PARAGUAY c. ÉTATS-UNIS D'AMÉRIQUE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

9 AVRIL 1998

ORDONNANCE

INTERNATIONAL COURT OF JUSTICE

YEAR 1998

1998
9 April
General List
No. 99

9 April 1998

CASE CONCERNING THE VIENNA CONVENTION ON CONSULAR RELATIONS

(PARAGUAY *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *Vice-President* WEERAMANTRY, *Acting President*; *President* SCHWEBEL; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK; *Registrar* VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court,

COUR INTERNATIONALE DE JUSTICE

ANNÉE 1998

1998
9 avril
Rôle général
n° 99

9 avril 1998

AFFAIRE RELATIVE À LA CONVENTION DE VIENNE SUR LES RELATIONS CONSULAIRES

(PARAGUAY c. ÉTATS-UNIS D'AMÉRIQUE)

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

ORDONNANCE

Présents : M. WEERAMANTRY, *vice-président, faisant fonction de président en l'affaire*; M. SCHWEBEL, *président de la Cour*; MM. ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, Mme HIGGINS, MM. PARRA-ARANGUREN, KOOIJMANS, REZEK, *juges*; M. VALENCIA-OSPINA, *greffier*.

La Cour internationale de Justice,

Ainsi composée,

Après délibéré en chambre du conseil,

Vu les articles 41 et 48 du Statut de la Cour et les articles 73, 74 et 75 de son Règlement,

Having regard to the Application filed in the Registry of the Court on 3 April 1998, whereby the Republic of Paraguay (hereinafter "Paraguay") instituted proceedings against the United States of America (hereinafter "the United States") for "violations of the Vienna Convention on Consular Relations [of 24 April 1963]" (hereinafter the "Vienna Convention") allegedly committed by the United States,

Makes the following Order:

1. Whereas, in its aforementioned Application, Paraguay bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention on Consular Relations ("the Optional Protocol");

2. Whereas, in the Application, it is stated that in 1992 the authorities of the Commonwealth of Virginia arrested a Paraguayan national, Mr. Angel Francisco Breard; whereas it is maintained that he was charged, tried, convicted of culpable homicide and sentenced to death by a Virginia court (the Circuit Court of Arlington County) in 1993, without having been informed, as is required under Article 36, subparagraph 1 *(b)*, of the Vienna Convention, of his rights under that provision, whereas it is specified that among these rights are the right to request that the relevant consular office of the State of which he is national be advised of his arrest and detention, and the right to communicate with that office; and whereas it is also alleged that the authorities of the Commonwealth of Virginia also did not advise the Paraguayan consular officers of Mr. Breard's detention, and that those officers were only able to render assistance to him from 1996, when the Paraguayan Government learnt by its own means that Mr. Breard was imprisoned in the United States;

3. Whereas, in the Application, Paraguay states that Mr. Breard's subsequent petitions before federal courts in order to seek a writ of *habeas corpus* failed, the federal court of first instance having, on the basis of the doctrine of "procedural default", denied him the right to invoke the Vienna Convention for the first time before that court, and the intermediate federal appellate court having confirmed that decision; whereas, consequently, the Virginia court that sentenced Mr. Breard to the death penalty set an execution date of 14 April 1998; whereas Mr. Breard, having exhausted all means of legal recourse available to him as of right, petitioned the United States Supreme Court for a writ of *certiorari*, requesting it to exercise its discretionary power to review the decision given by the lower federal courts and to grant a stay of his execution pending that review, and whereas, while this request is still pending before the Supreme Court, it is however rare for that Court to accede to such requests; and whereas Paraguay stated, moreover, that it brought proceedings itself before the federal courts of the United States as early as 1996, with a view to obtaining the annulment of the proceedings initiated against Mr. Breard, but both the federal court of first instance and the federal appellate court held that they had no jurisdiction in the case because it was barred by a doctrine conferring "sovereign immunity" on federated states; whereas Paraguay also filed a petition for a writ of *certiorari* in the Supreme Court, which is also still pending; and whereas Paraguay furthermore engaged in diplomatic efforts with the Government of the United States and sought the good offices of the Department of State;

Vu la requête enregistrée au Greffe de la Cour le 3 avril 1998, par laquelle la République du Paraguay (ci-après dénommée le «Paraguay») a introduit une instance contre les Etats-Unis d'Amérique (ci-après dénommés les «Etats-Unis») à raison de «violations de la convention de Vienne [du 24 avril 1963] sur les relations consulaires» (ci-après dénommée la «convention de Vienne») qui auraient été commises par les Etats-Unis,

Rend l'ordonnance suivante :

1. Considérant que, dans sa requête susmentionnée, le Paraguay fonde la compétence de la Cour sur le paragraphe 1 de l'article 36 du Statut de la Cour et l'article premier du protocole de signature facultative concernant le règlement obligatoire des différends qui accompagne la convention de Vienne sur les relations consulaires (ci-après dénommé le «protocole de signature facultative»);

2. Considérant que, dans cette requête, il est indiqué qu'en 1992 les autorités de l'Etat de Virginie ont arrêté un ressortissant paraguayen, M. Angel Francisco Breard; qu'il est soutenu que celui-ci a été accusé, jugé, déclaré coupable d'homicide volontaire et condamné à la peine capitale par une juridiction de Virginie (*Circuit Court* du comté d'Arlington) en 1993, sans avoir été informé, comme l'exige l'alinéa *b)* du paragraphe 1 de l'article 36 de la convention de Vienne, de ses droits aux termes de cet alinéa; qu'il est précisé que, parmi ces droits, figurent le droit pour l'intéressé de demander que le poste consulaire compétent de l'Etat dont il est le ressortissant soit averti de son arrestation et de sa détention, et son droit de communiquer avec ledit poste, et qu'il est également allégué que les autorités de l'Etat de Virginie n'ont pas davantage avisé les fonctionnaires consulaires paraguayens compétents de la détention de M. Breard, et que ceux-ci n'ont été en mesure de lui fournir une assistance qu'à partir de 1996, lorsque le Gouvernement du Paraguay apprit par ses propres moyens que M. Breard était emprisonné aux Etats-Unis;

3. Considérant que, dans ladite requête, le Paraguay expose que les recours ultérieurement formés par M. Breard devant les juridictions fédérales en vue d'obtenir en sa faveur une ordonnance d'*habeas corpus* n'ont pas abouti, le tribunal fédéral de première instance ayant, sur la base d'une doctrine dite de la «carence procédurale» (*procedural default*), dénié à l'intéressé le droit d'invoquer pour la première fois devant lui la convention de Vienne, et la cour d'appel fédérale de première instance ayant confirmé cette décision; qu'en conséquence la juridiction de Virginie qui avait condamné M. Breard à la peine capitale a fixé au 14 avril 1998 la date de l'exécution de l'intéressé; que M. Breard, ayant épuisé toutes les voies de recours juridiques auxquelles il avait droit, a saisi la Cour suprême des Etats-Unis d'une demande d'ordonnance de *certiorari*, la priant d'exercer son pouvoir discrétionnaire de réexaminer la décision des juridictions fédérales inférieures et de décider qu'il serait sursis à son exécution pendant cet examen; et que, bien que cette demande soit encore pendante devant la Cour suprême, il est cependant rare que celle-ci accède à des demandes de cette nature, et considérant que le Paraguay expose en outre qu'il a lui-même saisi les juridictions fédérales des Etats-Unis dès 1996, à l'effet d'obtenir l'annulation des procédures engagées à l'encontre de M. Breard, mais que tant le tribunal fédéral de première instance que la cour d'appel fédérale ont décidé qu'ils n'avaient pas compétence dans cette affaire eu égard à une doctrine conférant une «immunité souveraine» aux Etats fédérés; qu'il a également soumis une demande d'ordonnance de *certiorari* à la Cour suprême, qui est également pendante; et qu'il a en outre engagé une action diplomatique auprès du Gouvernement des Etats-Unis et sollicité les bons offices du département d'Etat;

4. Whereas, in its Application, Paraguay maintains that by violating its obligations under Article 36, subparagraph 1 *(b)*, of the Vienna Convention, the United States prevented Paraguay from exercising the consular functions provided for in Articles 5 and 36 of the Convention and specifically for ensuring the protection of its interests and of those of its nationals in the United States; whereas Paraguay states that it was not able to contact Mr. Breard nor to offer him the necessary assistance, and whereas accordingly Mr. Breard "made a number of objectively unreasonable decisions during the criminal proceedings against him, which were conducted without translation"; and "did not comprehend the fundamental differences between the criminal justice systems of the United States and Paraguay"; and whereas Paraguay concludes from this that it is entitled to *restitutio in integrum*, that is to say "the re-establishment of the situation that existed before the United States failed to provide the notifications . . . required by the Convention";

5. Whereas Paraguay requests the Court to adjudge and declare as follows:

"(1) that the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by Articles 5 and 36 of the Vienna Convention;

(2) that Paraguay is therefore entitled to *restitutio in integrum*;

(3) that the United States is under an international legal obligation not to apply to the doctrine of 'procedural default', or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention, and

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should restore the *status quo ante*, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and

(3) the United States should provide Paraguay a guarantee of the non-repetition of the illegal acts";

/...

4. Considérant que, dans sa requête, le Paraguay soutient qu'en méconnaissant leurs obligations aux termes de l'alinéa *b)* du paragraphe 1 de l'article 36 de la convention de Vienne, les Etats-Unis l'ont empêché d'exercer les fonctions consulaires prévues aux articles 5 et 36 de la convention, et tout spécialement d'assurer la protection de ses intérêts et de ceux de ses ressortissants aux Etats-Unis; qu'il souligne qu'il n'a pu contacter M. Breard ni lui fournir l'assistance nécessaire, et qu'en conséquence celui-ci a «pris un certain nombre de décisions d'un caractère objectivement déraisonnable tout au long de la procédure pénale engagée contre lui, qui a été menée sans traduction» et «n'a pas compris les différences fondamentales qui existent entre les systèmes de justice pénale aux Etats-Unis et au Paraguay»; et que le Paraguay en conclut qu'il a droit à une *restitutio in integrum*, c'est-à-dire au «rétablissement de la situation qui existait avant que les Etats-Unis manquent de procéder aux notifications requises»;

5. Considérant que le Paraguay prie la Cour de dire et juger que :

«1) en arrêtant, détenant, jugeant, déclarant coupable et condamnant M. Angel Francisco Breard, dans les conditions indiquées dans l'exposé des faits qui précède, les Etats-Unis ont violé leurs obligations juridiques internationales envers le Paraguay, en son nom propre et dans l'exercice du droit qu'a cet Etat d'assurer la protection diplomatique de son ressortissant, ainsi qu'il est prévu aux articles 5 et 36 de la convention de Vienne;

2) le Paraguay en conséquence a droit à une *restitutio in integrum*;

3) les Etats-Unis ont l'obligation juridique internationale de ne pas appliquer la doctrine dite de la «carence procédurale» *(procedural default)*, ni aucune autre doctrine de son droit interne, d'une manière qui ait pour effet de faire obstacle à l'exercice des droits conférés par l'article 36 de la convention de Vienne; et

4) les Etats-Unis ont l'obligation juridique internationale d'agir conformément aux obligations juridiques internationales susmentionnées dans le cas où, à l'avenir, ils placeraient en détention M. Angel Francisco Breard ou tout autre ressortissant paraguayen sur leur territoire ou engageraient une action pénale à leur encontre, que cet acte soit entrepris par un pouvoir constitué, législatif, exécutif, judiciaire ou autre, que ce pouvoir occupe une place supérieure ou subordonnée dans l'organisation des Etats-Unis et que les fonctions de ce pouvoir présentent un caractère international ou interne,

et, conformément aux obligations juridiques internationales susmentionnées :

1) toute responsabilité pénale attribuée à M. Angel Francisco Breard en violation d'obligations juridiques internationales est nulle et doit être reconnue comme nulle par les autorités légales des Etats-Unis;

2) les Etats-Unis doivent restaurer le *statu quo ante*, c'est-à-dire rétablir la situation qui existait avant les actes de détention, de poursuite, de déclaration de culpabilité et de condamnation du ressortissant du Paraguay commis en violation des obligations juridiques internationales des Etats-Unis; et

3) les Etats-Unis doivent donner au Paraguay la garantie que de tels actes illicites ne se reproduiront pas»;

6. Whereas, on 3 April 1998, after having filed its Application, Paraguay also submitted an urgent request for the indication of provisional measures in order to protect its rights, pursuant to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court;

7. Whereas, in its request for the indication of provisional measures, Paraguay refers to the basis of jurisdiction of the Court invoked in its Application, and to the facts set out and the submissions made therein; and whereas it reaffirms in particular that the United States has violated its obligations under the Vienna Convention and must restore the *status quo ante*;

8. Whereas, in its request for the indication of provisional measures of protection, Paraguay states that, on 25 February 1998, the Circuit Court of Arlington County, Virginia, ordered that Mr. Breard be executed on 14 April 1998; whereas it emphasizes that "[t]he importance and sanctity of an individual human life are well established in international law" and "[a]s recognized by Article 6 of the International Covenant on Civil and Political Rights, every human being has the inherent right to life and this right shall be protected by law"; and whereas Paraguay states in the following terms the grounds for its request and the possible consequences of its dismissal:

> "Under the grave and exceptional circumstances of this case, and given the paramount interest of Paraguay in the life and liberty of its nationals, provisional measures are urgently needed to protect the life of Paraguay's national and the ability of this Court to order the relief to which Paraguay is entitled: restitution in kind. Without the provisional measures requested, the United States will execute Mr. Breard before this Court can consider the merits of Paraguay's claims, and Paraguay will be forever deprived of the opportunity to have the *status quo ante* restored in the event of a judgment in its favour";

9. Whereas Paraguay asks that, pending final judgment in this case, the Court indicate:

> "*(a)* That the Government of the United States take the measures necessary to ensure that Mr. Breard not be executed pending the disposition of this case;
>
> *(b)* That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraph *(a)* immediately above and the results of those actions; and
>
> *(c)* That the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision this Court may render on the merits of the case";

and whereas it asks the Court moreover to consider its request as a matter of the greatest urgency "in view of the extreme gravity and immediacy of the threat that the authorities . . will execute a Paraguayan citizen";

6. Considérant que, le 3 avril 1998, après avoir déposé sa requête, le Paraguay a également présenté une demande urgente en indication de mesures conservatoires à l'effet de protéger ses droits, en se référant à l'article 41 du Statut et aux articles 73, 74 et 75 du Règlement de la Cour,

7. Considérant que, dans sa demande en indication de mesures conservatoires, le Paraguay se réfère à la base de juridiction de la Cour invoquée dans sa requête, ainsi qu'aux faits qui y sont exposés et aux conclusions qui y sont formulées; et qu'il réaffirme en particulier que les Etats-Unis ont manqué à leurs obligations en vertu de la convention de Vienne et doivent rétablir le *statu quo ante*;

8. Considérant que, dans sa demande en indication de mesures conservatoires, le Paraguay rappelle que, le 25 février 1998, la *Circuit Court* du comté d'Arlington, en Virginie, a ordonné que M. Breard soit exécuté le 14 avril 1998; qu'il souligne que : «[l]'importance et le caractère sacré de la vie humaine sont des principes bien établis du droit international» et que «[c]omme le reconnaît l'article 6 du pacte international relatif aux droits civils et politiques, le droit à la vie est inhérent à la personne humaine et ... doit être protégé par la loi»; et qu'il expose en ces termes les motifs de la demande et les conséquences éventuelles de son rejet :

> «Dans les circonstances graves et exceptionnelles de la présente affaire et eu égard à l'intérêt primordial que le Paraguay attache à la vie et à la liberté de ses ressortissants, il est urgent d'indiquer des mesures conservatoires pour protéger la vie du ressortissant paraguayen et sauvegarder le pouvoir de la Cour d'ordonner la mesure à laquelle le Paraguay a droit : le rétablissement de l'état de choses antérieur. Si les mesures conservatoires demandées ne sont pas indiquées, les Etats-Unis exécuteront M. Breard avant que la Cour puisse examiner le bien-fondé des prétentions du Paraguay et celui-ci sera à jamais privé de la possibilité d'obtenir le rétablissement de la situation antérieure si la Cour venait à se prononcer en sa faveur»;

9. Considérant que le Paraguay prie la Cour d'indiquer, en attendant l'arrêt définitif en l'instance, des mesures tendant à ce que :

> «*a)* le Gouvernement des Etats-Unis prenne les mesures nécessaires pour faire en sorte que M. Breard ne soit pas exécuté tant que la décision n'aura pas été rendue en la présente instance;
>
> *b)* le Gouvernement des Etats-Unis porte à la connaissance de la Cour les mesures qu'il aura prises en application de l'alinéa *a)* ci-dessus ainsi que les suites qui auront été données à ces mesures; et
>
> *c)* le Gouvernement des Etats-Unis fasse en sorte qu'il ne soit pris aucune mesure qui puisse porter atteinte aux droits de la République du Paraguay en ce qui concerne toute décision que la Cour pourrait prendre sur le fond de l'affaire»;

et qu'il prie en outre la Cour d'examiner sa demande avec la plus grande urgence «eu égard à l'extrême gravité et à l'imminence de la menace d'exécution d'un citoyen paraguayen»;

10. Whereas, on 3 April 1998, the Ambassador of Paraguay to the Netherlands addressed a letter to the President of the Court requesting the Court to fix an early date for a hearing on his Government's request for provisional measures, asking the Member of the Court who, in accordance with the provisions of Article 13, paragraph 1, and Article 32, paragraph 1, of the Rules of Court, would exercise the functions of President in the case to "call upon the United States of America to ensure that Mr. Breard is not put to death before the Court's ruling on Paraguay's request for provisional measures"; and indicating that he had been appointed as Agent of Paraguay for the purposes of the case;

11. Whereas, on 3 April 1998, the date on which the Application and the request for provisional measures were filed in the Registry, the Registrar advised the Government of the United States of the filing of those documents, communicated the text of them to that Government by facsimile and sent it a certified copy of the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court and Article 38, paragraph 4, of the Rules of Court, together with a certified copy of the request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court; and whereas the Registrar also sent the Government of the United States a copy of the letter addressed that day to the President of the Court by the Agent of Paraguay;

12. Whereas, by identical letters dated 3 April 1998, the Vice-President of the Court addressed both Parties in the following terms:

> "Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects";

and whereas, at a meeting held the same day with the representatives of both Parties, he advised them that the Court would hold public hearings on 7 April 1998 at 10 a.m., in order to afford the Parties the opportunity of presenting their observations on the request for provisional measures;

13. Whereas, by a letter dated 5 April 1998, received in the Registry on 6 April 1998, the Ambassador of the United States to the Netherlands informed the Court of the appointment of an Agent and a Co-Agent of his Government for the case;

14. Whereas, pending the notification under Article 40, paragraph 3, of the Statute of the Court and Article 42 of the Rules of Court, by transmission of the printed text, in two languages, of the Application to the Members of the United Nations and to other States entitled to appear before the Court, the Registrar, on 6 April 1998, informed those States of the filing of the Application and of its subject-matter, and of the request for the indication of provisional measures;

10. Considérant que, le 3 avril 1998, l'ambassadeur du Paraguay aux Pays-Bas a adressé au président de la Cour une lettre demandant à la Cour de fixer une date rapprochée pour la tenue d'une audience sur la demande en indication de mesures conservatoires de son gouvernement; priant le membre de la Cour qui, conformément aux dispositions des paragraphes 1 des articles 13 et 32 du Règlement, exercerait la présidence pour l'affaire, de faire usage des pouvoirs que lui confère le paragraphe 4 de l'article 74 du Règlement et d'«invite[r] les Etats-Unis d'Amérique à faire en sorte que M. Breard ne soit pas exécuté avant que la Cour statue sur la demande ainsi présentée»; et indiquant qu'il avait été désigné comme agent du Paraguay aux fins de l'affaire;

11. Considérant que, le 3 avril 1998, date à laquelle la requête et la demande en indication de mesures conservatoires ont été déposées au Greffe, le greffier a avisé le Gouvernement des Etats-Unis du dépôt de ces documents, lui en a communiqué le texte par télécopie et lui a adressé une copie certifiée conforme de la requête, en application du paragraphe 2 de l'article 40 du Statut et du paragraphe 4 de l'article 38 du Règlement, ainsi qu'une copie certifiée conforme de la demande en indication de mesures conservatoires, en application du paragraphe 2 de l'article 73 du Règlement; et considérant que le greffier a également fait tenir au Gouvernement des Etats-Unis une copie de la lettre adressée le même jour au président de la Cour par l'agent du Paraguay;

12. Considérant que, par des lettres identiques en date du 3 avril 1998, le vice-président de la Cour s'est adressé aux deux Parties dans les termes suivants :

> «Exerçant la présidence de la Cour en vertu des articles 13 et 32 du Règlement de la Cour, et agissant conformément aux dispositions du paragraphe 4 de l'article 74 dudit Règlement, j'appelle par la présente l'attention des deux Parties sur la nécessité d'agir de manière que toute ordonnance de la Cour sur la demande en indication de mesures conservatoires puisse avoir les effets voulus»;

et, qu'à la réunion qu'il a tenue le même jour avec les représentants des deux Parties, il a avisé ceux-ci de ce que la Cour tiendrait des audiences publiques le 7 avril 1998 à 10 heures aux fins de donner aux Parties la possibilité de présenter leurs observations sur la demande en indication de mesures conservatoires;

13. Considérant que, par lettre du 5 avril 1998, reçue au Greffe le 6 avril 1998, l'ambassadeur des Etats-Unis aux Pays-Bas a informé la Cour de la désignation d'un agent et d'un coagent de son gouvernement aux fins de l'affaire;

14. Considérant qu'en attendant que la communication prévue au paragraphe 3 de l'article 40 du Statut et à l'article 42 du Règlement de la Cour ait été effectuée par transmission du texte imprimé, en deux langues, de la requête aux Membres des Nations Unies et aux autres Etats admis à ester devant la Cour, le greffier a, le 6 avril 1998, informé ces Etats du dépôt de la requête et de son objet, ainsi que de la demande en indication de mesures conservatoires;

15. Whereas, on 6 April 1998, the Registrar, in accordance with Article 43 of the Rules of Court, addressed the notification provided for in Article 63, paragraph 1, of the Statute to the States, other than the Parties to the dispute, which on the basis of information supplied by the Secretary-General of the United Nations as depositary appeared to be parties to the Vienna Convention and to the Optional Protocol;

16. Whereas, at the public hearings held on 7 April 1998, in accordance with Article 74, paragraph 3, of the Rules of Court, oral statements on the request for the indication of provisional measures were presented by the Parties:

On behalf of Paraguay: by H. E. Mr. Manuel María Cáceres,
Mr. Donald Francis Donovan,
Mr. Barton Legum,
Dr. José Emilio Gorostiaga;

On behalf of the United States: by Mr. David R. Andrews,
Ms Catherine Brown,
Mr. John R. Crook,
Mr. Michael J. Matheson;

and whereas at the hearings a question was put by a Member of the Court, to which a reply was given orally and in writing;

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17. Whereas, at the hearings, Paraguay reiterated the line of argument set forth in its Application and its request for the indication of provisional measures;

18. Whereas at the hearing, the United States argued that Mr. Breard's guilt was well established, and pointed out that the accused had admitted his guilt, which Paraguay did not dispute; whereas it recognized that Mr. Breard had not been informed, at the time of his arrest and trial, of his rights under Article 36, subparagraph 1 *(b)*, of the Vienna Convention, and indicated to the Court that this omission was not deliberate; whereas it nonetheless maintained that the person concerned had had all necessary legal assistance, that he understood English well and that the assistance of consular officers would not have changed the outcome of the proceedings brought against him in any way; whereas, referring to State practice in these matters, it stated that the notification provided for by Article 36, subparagraph 1 *(b)*, of the Vienna Convention is unevenly made, and that when a claim is made for failure to notify, the only consequence is that apologies are presented by the government responsible; and whereas it submitted that the automatic invalidation of the proceedings initiated and the return to the *status quo ante* as penalties for the failure to notify not only find no support in State practice, but would be unworkable;

15. Considérant que, le 6 avril 1998, le greffier, conformément à l'article 43 du Règlement de la Cour, a adressé la notification prévue au paragraphe 1 de l'article 63 du Statut aux Etats, autres que les Parties au litige, qui sont apparus comme étant parties à la convention de Vienne et au protocole de signature facultative, selon les informations communiquées par le Secrétaire Général de l'Organisation des Nations Unies en tant que dépositaire;

16. Considérant que, lors des audiences publiques tenues le 7 avril 1998 conformément au paragraphe 3 de l'article 74 du Règlement, des observations orales sur la demande en indication de mesures conservatoires ont été présentées par les Parties :

Au nom du Paraguay : S. Exc. M. Manuel María Cáceres,
M. Donald Francis Donovan,
M. Barton Legum,
M. José Emilio Gorostiaga;

Au nom des Etats-Unis : M. David R. Andrews,
Mme Catherine Brown,
M. John R. Crook,
M. Michael J. Matheson;

et considérant qu'à l'audience une question a été posée par un membre de la Cour, à laquelle il a été répondu oralement et par écrit;

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17. Considérant qu'à l'audience le Paraguay a réitéré l'argumentation développée dans sa requête et sa demande en indication de mesures conservatoires;

18. Considérant qu'à l'audience les Etats-Unis ont fait valoir que la culpabilité de M. Breard était bien établie et ont souligné que l'accusé avait admis sa culpabilité, ce que ne conteste pas le Paraguay; qu'ils ont reconnu que M. Breard n'avait pas été informé, lorsqu'il avait été arrêté et jugé, de ses droits aux termes de l'alinéa *b)* du paragraphe 1 de l'article 36 de la convention de Vienne, et ont fait observer à la Cour que cette omission n'était pas délibérée; qu'ils ont toutefois soutenu que l'intéressé avait bénéficié de toute l'assistance judiciaire nécessaire, qu'il comprenait bien la langue anglaise et que l'assistance de fonctionnaires consulaires n'aurait rien changé au résultat des procédures engagées contre lui; que, se référant à la pratique des Etats en la matière, ils ont exposé que la notification prévue à l'alinéa *b)* du paragraphe 1 de l'article 36 est inégalement effectuée, et que, lorsqu'une réclamation est élevée pour défaut de notification, la seule conséquence est la présentation d'excuses par le gouvernement responsable; et qu'ils ont conclu que l'invalidation automatique des procédures engagées et le retour au *statu quo ante* comme sanctions du défaut de notification, non seulement ne trouvent aucun appui dans la pratique étatique, mais seraient impossible à réaliser;

19. Whereas the United States also indicated that the State Department had done everything in its power to help the Government of Paraguay as soon as it was informed of the situation in 1996; and whereas it stated that when, on 30 March 1998, Paraguay advised the Government of the United States of its intention to bring proceedings before the Court if the United States Government did not take steps to initiate consultation and to obtain a stay of execution for Mr. Breard, the Government of the United States had emphasized *inter alia* that a stay of execution depended exclusively on the United States Supreme Court and the Governor of Virginia;

20. Whereas the United States furthermore maintained that Paraguay's contention that the invalidation of the sentence of a person who had not been notified pursuant to Article 36, subparagraph 1 *(b)*, of the Vienna Convention could be required under that instrument, has no foundation in the relevant provisions, their *travaux préparatoires* or the practice of States, and that, in the event, Mr. Breard has not been prejudiced by the absence of notification; and whereas it pointed out that provisional measures should not be indicated where it appears that the Applicant's argument will not enable it to be successful on the merits;

21. Whereas the United States also stated that, when the Court indicates provisional measures under Article 41 of its Statute, it must take the rights of each of the Parties into consideration and ensure that it maintains a fair balance in protecting those rights; whereas that would not be the case if it acceded to Paraguay's request in these proceedings; and whereas the measures requested by Paraguay would prejudice the merits of the case;

22. Whereas the United States finally alleged that the indication of the provisional measures requested by Paraguay would be contrary to the interests of the States parties to the Vienna Convention and to those of the international community as a whole as well as to those of the Court, and would in particular be such as seriously to disrupt the criminal justice systems of the States parties to the Convention, given the risk of proliferation of cases; and whereas it stated in that connection that States have an overriding interest in avoiding external judicial intervention which would interfere with the execution of a sentence passed at the end of an orderly process meeting the relevant human rights standards;

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23. Whereas on a request for the indication of provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, but whereas it may not indicate them unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded;

19. Considérant que les Etats-Unis ont également indiqué que le département d'Etat avait fait tout ce qui était en son pouvoir pour aider le Gouvernement du Paraguay dès qu'il avait été mis au courant de la situation en 1996; et qu'ils ont précisé que lorsque, le 30 mars 1998, le Paraguay avait avisé le Gouvernement des Etats-Unis de son intention de saisir la Cour si celui-ci ne prenait pas des mesures pour engager des consultations et obtenir un sursis à l'exécution de M. Breard, ledit Gouvernement avait notamment souligné que l'obtention d'un tel sursis dépendait exclusivement de la Cour suprême des Etats-Unis et du gouverneur de Virginie;

20. Considérant que les Etats-Unis ont par ailleurs soutenu que la thèse du Paraguay, selon laquelle l'invalidation de toute condamnation d'une personne n'ayant pas reçu la notification prévue à l'alinéa *b)* du paragraphe 1 de l'article 36 de la convention de Vienne pourrait être requise aux termes de celle-ci, ne trouve aucun fondement dans les textes pertinents, leurs travaux préparatoires ou la pratique des Etats, et, qu'en l'occurrence, M. Breard n'a pas subi de préjudice du fait de l'absence de notification; et qu'ils ont souligné que des mesures conservatoires ne doivent pas être indiquées lorsqu'il appert que la thèse du demandeur ne lui permettra pas d'avoir gain de cause au fond;

21. Considérant que les Etats-Unis ont encore exposé que, lorsque la Cour indique des mesures conservatoires en vertu de l'article 41 de son Statut, elle doit prendre en considération les droits de chacune des Parties, et veiller à assurer un juste équilibre dans la protection de ceux-ci; que tel ne serait pas le cas si elle accédait à la demande du Paraguay en l'espèce, et que les mesures sollicitées par le Paraguay préjugeraient du fond de l'affaire;

22. Considérant que les Etats-Unis ont enfin allégué que l'indication des mesures conservatoires demandées par le Paraguay serait contraire aux intérêts des Etats parties à la convention de Vienne, à ceux de la communauté internationale dans son ensemble, aussi bien qu'à ceux de la Cour, et serait en particulier de nature à bouleverser les systèmes de justice pénale des Etats parties à la convention, compte tenu du risque de multiplication des recours; et qu'ils ont précisé à cet égard que les Etats ont un intérêt impérieux à être soustraits à toute intervention judiciaire extérieure qui entraverait l'exécution d'une décision de justice prise suivant des procédures régulières répondant aux critères pertinents en matière de droits de l'homme;

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23. Considérant qu'en présence d'une demande en indication de mesures conservatoires la Cour n'a pas besoin, avant de décider d'indiquer ou non de telles mesures, de s'assurer d'une manière définitive qu'elle a compétence quant au fond de l'affaire, mais qu'elle ne peut cependant indiquer ces mesures que si les dispositions invoquées par le demandeur semblent *prima facie* constituer une base sur laquelle la compétence de la Cour pourrait être fondée;

24. Whereas Article I of the Optional Protocol, which Paraguay invokes as the basis of jurisdiction of the Court in this case, is worded as follows:

> "Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol";

25. Whereas, according to the information communicated by the Secretary-General of the United Nations as depositary, Paraguay and the United States are parties to the Vienna Convention and to the Optional Protocol, in each case without reservation;

26. Whereas Articles II and III of the aforementioned Protocol provide that within a period of two months after one party has notified the other of the existence of a dispute, the parties may agree to resort not to the International Court of Justice but to an arbitration tribunal or alternatively first to conciliation; but whereas these Articles

> "when read in conjunction with those of Article I and with the Preamble to the Protocols, make it crystal clear that they are not to be understood as laying down a precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputes arising out of the interpretation or application of the Vienna Convention . . ." (*United States Diplomatic and Consular Staff in Tehran, (United States of America* v. *Iran), Judgment, 24 May 1980, I.C.J. Reports 1980*, pp. 25-26);

27. Whereas, in its Application and at the hearings, Paraguay stated that the issues in dispute between itself and the United States concern Articles 5 and 36 of the Vienna Convention and fall within the compulsory jurisdiction of the Court under Article I of the Optional Protocol; and whereas it concluded from this that the Court has the jurisdiction necessary to indicate the provisional measures requested;

28. Whereas at the hearing, the United States contended, for its part, that Paraguay had not established that the Court had jurisdiction in these proceedings, even prima facie; whereas it argued that there is no dispute between the Parties as to the interpretation of Article 36, subparagraph 1 *(b)*, of the Vienna Convention and nor is there a dispute as to its application, since the United States recognizes that the notification provided for was not carried out; whereas the United States maintained that the objections raised by Paraguay to the proceedings brought against its national do not constitute a dispute concerning the interpretation or application of the Vienna Convention; and whereas it added that there was no entitlement to *restitutio in integrum* under the terms of that Convention;

24. Considérant que l'article premier du protocole de signature facultative, que le Paraguay invoque comme base de la compétence de la Cour dans la présente affaire, est ainsi libellé :

> «Les différends relatifs à l'interprétation ou à l'application de la convention relèvent de la compétence obligatoire de la Cour internationale de Justice, qui, à ce titre, pourra être saisie par une requête de toute partie au différend qui sera elle-même partie au présent protocole»,

25. Considérant que, selon les informations communiquées par le Secrétaire général de l'Organisation des Nations Unies en tant que dépositaire, le Paraguay et les Etats-Unis sont parties à la convention de Vienne et au protocole de signature facultative, dans chaque cas sans réserve;

26. Considérant que les articles II et III du protocole susmentionné prévoient que les parties peuvent convenir, dans un délai de deux mois après notification par une partie à l'autre qu'il existe un litige, d'adopter d'un commun accord, au lieu du recours à la Cour internationale de Justice, une procédure devant un tribunal d'arbitrage ou de recourir tout d'abord à une procédure de conciliation; mais que si le texte de ces articles

> «est examiné en même temps que celui de l'article I et du préambule des protocoles, il tombe sous le sens qu'il ne faut pas y voir une condition préalable à l'applicabilité de la disposition précise et catégorique de l'article I qui prévoit la compétence obligatoire de la Cour pour connaître des différends relatifs à l'interprétation ou à l'application de la convention de Vienne...» (*Personnel diplomatique et consulaire des Etats-Unis à Téhéran (Etats-Unis d'Amérique c. Iran), arrêt, 24 mai 1980, C.I.J. Recueil 1980*, p. 25-26);

27. Considérant que, dans sa requête et à l'audience, le Paraguay a exposé que les questions en litige entre lui-même et les Etats-Unis d'Amérique concernent les articles 5 et 36 de la convention de Vienne et relèvent de la compétence obligatoire de la Cour en vertu de l'article premier du protocole de signature facultative; et qu'il en a conclu que la Cour dispose de la compétence nécessaire pour indiquer les mesures conservatoires demandées;

28. Considérant qu'à l'audience les Etats-Unis ont pour leur part soutenu que le Paraguay n'avait pas établi la compétence de la Cour en l'espèce, même *prima facie*; qu'ils ont fait valoir qu'il n'existe entre les Parties aucun différend quant à l'interprétation de l'alinéa *b)* du paragraphe 1 de l'article 36 de la convention de Vienne et qu'il n'en existe pas davantage quant à son application, dès lors que les Etats-Unis reconnaissent que la notification qui y est prévue n'a pas été effectuée; qu'ils ont soutenu que les objections que le Paraguay élève à l'encontre des procédures engagées contre son ressortissant ne sauraient être constitutives d'un différend relatif à l'interprétation ou à l'application de la convention de Vienne; et qu'ils ont ajouté qu'aucun droit à *restitutio in integrum* n'existe aux termes de ladite convention;

29. Whereas the United States moreover indicated to the Court that it had expressed its regret to Paraguay for the failure to notify Mr. Breard of his right to consular access, engaged in consultations with Paraguay on the matter and taken steps to ensure future compliance with its obligations under the Vienna Convention at both the federal and state level;

30. Whereas Paraguay asserts that it is nevertheless entitled to *restitutio in integrum*, that any criminal liability currently imposed on Mr. Breard should accordingly be recognized as void by the legal authorities of the United States and that the *status quo ante* should be restored in that Mr. Breard should have the benefit of the provisions of the Vienna Convention in any renewed proceedings brought against him, no objection to his continued detention meanwhile being made by Paraguay; whereas however the United States believes that these measures are not required by the Vienna Convention, would contravene the understanding underlying the adoption of Article 36 as well as the uniform practice of States, and would put this Court in a position of acting as a universal supreme court of criminal appeals;

31. Whereas there exists a dispute as to whether the relief sought by Paraguay is a remedy available under the Vienna Convention, in particular in relation to Articles 5 and 36 thereof; and whereas this is a dispute arising out of the application of the Convention within the meaning of Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of 24 April 1963,

32. Whereas the United States claimed nevertheless that prima facie there is no jurisdiction for the Court in this case as Paraguay has no legally cognizable claim to the relief it seeks nor any prospect ultimately of prevailing on the merits, because no prejudice to Mr. Breard has occurred;

33. Whereas the existence of the relief sought by Paraguay under the Convention can only be determined at the stage of the merits, and whereas the issue of whether any such remedy is dependent upon evidence of prejudice to the accused in his trial and sentence can equally only be decided upon at the merits;

34. Whereas the Court finds that, prima facie, it has jurisdiction under Article I of the aforesaid Optional Protocol to decide the dispute between Paraguay and the United States;

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35. Whereas the power of the Court to indicate provisional measures under Article 41 of its Statute is intended to preserve the respective rights of the parties pending its decision, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of a .

29. Considérant que les Etats-Unis ont en outre fait savoir à la Cour qu'ils ont exprimé leurs regrets au Paraguay pour avoir omis d'informer M. Breard de son droit à communiquer avec ses autorités consulaires, ont mené des consultations avec le Paraguay sur la question et pris des mesures pour faire en sorte qu'à l'avenir les obligations que leur impose la convention de Vienne soient respectées aussi bien au niveau fédéral qu'au niveau des Etats;

30. Considérant que le Paraguay soutient qu'il n'en a pas moins droit à une *restitutio in integrum*, que toute responsabilité pénale imputée actuellement à M. Breard devrait en conséquence être reconnue comme nulle par les autorités légales des Etats-Unis et que le *statu quo ante* devrait être rétabli pour que M. Breard puisse bénéficier des dispositions de la convention de Vienne dans toute nouvelle procédure judiciaire qui pourrait être engagée contre lui, étant entendu qu'aucune objection à l'égard de son maintien en détention ne serait élevée dans l'intervalle par le Paraguay; considérant toutefois que les Etats-Unis estiment que ces mesures ne sont pas prescrites par la convention de Vienne, qu'elles seraient contraires à l'interprétation qui prévalait lorsque l'article 36 a été adopté, ainsi qu'à la pratique uniforme des Etats, et placeraient la Cour dans une position qui lui conférerait le rôle d'une cour suprême universelle en matière de recours criminels;

31. Considérant qu'il existe un différend sur la question de savoir si la solution recherchée par le Paraguay figure parmi les mesures possibles en vertu de la convention de Vienne, en particulier au regard des dispositions des articles 5 et 36 de cette convention; et qu'il s'agit là d'un différend relatif à l'application de la convention au sens de l'article premier du protocole de signature facultative concernant le règlement obligatoire des différends du 24 avril 1963;

32. Considérant que les Etats-Unis estiment néanmoins qu'il n'existe pas de compétence *prima facie* de la Cour dans la présente affaire étant donné que la solution recherchée par le Paraguay n'est pas fondée en droit et que le Paraguay n'a pas la moindre possibilité d'obtenir finalement gain de cause sur le fond, parce que M. Breard n'a subi aucun préjudice;

33. Considérant que la question de savoir si la solution recherchée par le Paraguay est possible en vertu de la convention ne peut être tranchée qu'au stade du fond; qu'il en est de même du point de savoir si l'adoption de telles mesures est subordonnée à la preuve que l'accusé a subi un préjudice lors de son jugement et de sa condamnation;

34. Considérant que la Cour conclut qu'elle a *prima facie* compétence en vertu de l'article premier du protocole de signature facultative susmentionné pour se prononcer sur le différend entre le Paraguay et les Etats-Unis;

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35. Considérant que le pouvoir d'indiquer des mesures conservatoires que la Cour tient de l'article 41 de son Statut a pour objet de sauvegarder le droit de chacune des Parties en attendant qu'elle rende sa décision, et présuppose qu'un préjudice irréparable ne doit pas être causé aux droits

dispute in judicial proceedings; whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant, or to the Respondent; and whereas such measures are only justified if there is urgency;

36. Whereas the Court will not order interim measures in the absence of "irreparable prejudice . . . to rights which are the subject of dispute . . ." (*Nuclear Tests (Australia v. France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, p. 103; *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 19, para. 36; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 19, para. 34);

37. Whereas the execution of Mr. Breard is ordered for 14 April 1998; and whereas such an execution would render it impossible for the Court to order the relief that Paraguay seeks and thus cause irreparable harm to the rights it claims;

38. Whereas the issues before the Court in this case do not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes; and whereas, further, the function of this Court is to resolve international legal disputes between States, *inter alia* when they arise out of the interpretation or application of international conventions, and not to act as a court of criminal appeal;

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39. Whereas, in the light of the aforementioned considerations, the Court finds that the circumstances require it to indicate, as a matter of urgency, provisional measures in accordance with Article 41 of its Statute;

40. Whereas measures indicated by the Court for a stay of execution would necessarily be provisional in nature and would not in any way prejudge findings the Court might make on the merits; and whereas the measures indicated would preserve the respective rights of Paraguay and of the United States; and whereas it is appropriate that the Court, with the co-operation of the Parties, ensure that any decision on the merits be reached with all possible expedition;

en litige dans une procédure judiciaire, qu'il s'ensuit que la Cour doit se préoccuper de sauvegarder par de telles mesures les droits que l'arrêt qu'elle aura ultérieurement à rendre pourrait eventuellement reconnaître, soit au demandeur, soit au défendeur; et considérant que de telles mesures ne sont justifiées que s'il y a urgence;

36. Considérant que la Cour n'indiquera pas des mesures conservatoires si «un préjudice irréparable [n'est pas] causé aux droits en litige» (*Essais nucléaires (Australie c. France), mesures conservatoires, ordonnance du 22 juin 1973, C.I.J. Recueil 1973*, p. 103; *Personnel diplomatique et consulaire des Etats-Unis à Téhéran (Etats-Unis d'Amérique c. Iran), mesures conservatoires, ordonnance du 15 décembre 1979, C.I.J. Recueil 1979*, p. 19, par. 36; *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie (Serbie et Monténégro)), mesures conservatoires, ordonnance du 8 avril 1993, C.I.J. Recueil 1993* p. 19, par. 34);

37. Considérant que l'ordre d'exécution de M. Breard a été donné pour le 14 avril 1998; et qu'une telle exécution rendrait impossible l'adoption de la solution demandée par le Paraguay et porterait ainsi un préjudice irréparable aux droits revendiqués par celui-ci;

38. Considérant que les questions portées devant la Cour en l'espèce ne concernent pas le droit des Etats fédérés qui composent les Etats-Unis de recourir à la peine de mort pour les crimes les plus odieux; et considérant en outre que la fonction de la Cour est de régler des différends juridiques internationaux entre Etats, notamment lorsqu'ils découlent de l'interprétation ou de l'application de conventions internationales, et non pas d'agir en tant que cour d'appel en matière criminelle;

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39. Considérant que, compte tenu des considérations susmentionnées, la Cour conclut que les circonstances exigent qu'elle indique d'urgence des mesures conservatoires, conformément à l'article 41 de son Statut;

40. Considérant que des mesures indiquées par la Cour aux fins d'obtenir un sursis à l'exécution prévue seraient nécessairement de nature conservatoire et ne préjugeraient en rien les conclusions auxquelles la Cour pourrait aboutir sur le fond; et que de telles mesures préserveraient les droits respectifs du Paraguay et des Etats-Unis; et considérant qu'il convient que la Cour, avec la coopération des Parties, fasse en sorte que toute décision sur le fond soit rendue avec la plus grande célérité possible;

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41. For these reasons,

THE COURT

Unanimously,

I. *Indicates* the following provisional measures:

The United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

II. *Decides*, that, until the Court has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this ninth day of April, one thousand nine hundred and ninety-eight, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Paraguay and the Government of the United States of America, respectively.

(Signed) Christopher G. WEERAMANTRY,
Vice-President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

President SCHWEBEL and Judges ODA and KOROMA append declarations to the Order of the Court.

(Initialled) C.G.W.

(Initialled) E. V.O.

41. Par ces motifs,

LA COUR,

à l'unanimité,

I. *Indique* à titre provisoire les mesures conservatoires suivantes :

Les Etats-Unis doivent prendre toutes les mesures dont ils disposent pour que M. Angel Francisco Breard ne soit pas exécuté tant que la décision définitive en la présente instance n'aura pas été rendue, et doivent porter à la connaissance de la Cour toutes les mesures qui auront été prises en application de la présente ordonnance.

II. *Décide* que, jusqu'à ce que la Cour rende sa décision définitive, elle demeurera saisie des questions qui font l'objet de la présente ordonnance.

Fait en anglais et en français, le texte anglais faisant foi, au Palais de la Paix, à La Haye, le neuf avril mil neuf cent quatre-vingt-dix-huit, en trois exemplaires, dont l'un restera déposé aux archives de la Cour et les autres seront transmis respectivement au Gouvernement de la République du Paraguay et au Gouvernement des Etats-Unis d'Amérique.

Le vice-président,
(Signé) Christopher G. WEERAMANTRY.

Le greffier,
(Signé) Eduardo VALENCIA-OSPINA.

M. SCHWEBEL, président de la Cour, et MM. ODA et KOROMA, juges, joignent des declarations à l'ordonnance.

(Paraphé) C. G. W.

(Paraphé) E.V.O.

DECLARATION OF PRESIDENT SCHWEBEL

I have voted for the Order, but with disquiet. The sensitive issues it poses have been hastily, if ably, argued. The evidence introduced is bare. The Court's consideration of the issues of law and fact, in the circumstances imposed upon it, has been summary. The United States maintains that no State has ever before claimed as Paraguay now does that, because of lack of consular access under the Vienna Convention on Consular Relations, the results of a trial, conviction, and appeal should be voided. Not only has the United States apologized to Paraguay for the unintentional failure of notification to Paraguay's consul of the arrest and trial of the accused, but it has taken substantial steps to strengthen what appears to be a practice in the United States of variable compliance with the obligations imposed upon it by the Vienna Convention.

All this said, I have voted for the Order indicating provisional measures suggested pursuant to Article 41 of the Statute of the Court. Those measures ought to be taken to preserve the rights of Paraguay in a situation of incontestable urgency.

I have so voted essentially for these reasons. There is an admitted failure by the Commonwealth of Virginia to have afforded Paraguay timely consular access, that is to say, there is an admitted breach of treaty. An apology and Federal provision for avoidance of future such lapses does not assist the accused, who Paraguay alleges was or may have been prejudiced by lack of consular access, a question which is for the merits. It is of obvious importance to the maintenance and development of a rule of law among States that the obligations imposed by treaties be complied with and that, where they are not, reparation be required. The mutuality of interest of States in the effective observance of the obligations of the Vienna Convention on Consular Relations is the greater in the intermixed global community of today and tomorrow (and the citizens of no State have a higher interest in the observance of those obligations than the peripatetic citizens of the United States). In my view, these considerations outweigh the serious difficulties which this Order imposes on the authorities of the United States and Virginia.

(Signed) Stephen M. SCHWEBEL.

DECLARATION OF JUDGE ODA

1. I voted in favour of the Court's Order with great hesitation as I believed and I still believe that the request for the indication of provisional measures of protection submitted by Paraguay to the Court should have been dismissed. However, in the limited time — one or two days — given to the Court to deal with this matter, I have found it impossible to develop my points sufficiently to persuade my colleagues to alter their position.

2. First of all, I would like to express some of my thoughts in connection with this request.

I can, on humanitarian grounds, understand the plight of Mr. Breard and recognize that owing to the fact that Paraguay filed this request on 3 April 1998, his fate now, albeit unreasonably, lies in the hands of the Court.

I would like to add, however, that, if Mr. Breard's rights as they relate to humanitarian issues are to be respected then, in parallel, the matter of the rights of victims of violent crime (a point which has often been overlooked) should be taken into consideration. It should also be noted that since his arrest, Mr. Breard has been treated fairly in all legal proceedings within the American judicial system governed by the rule of law.

The Court cannot act as a court of criminal appeal and cannot be petitioned for writs of *habeas corpus*. The Court does not have jurisdiction to decide matters relating to capital punishment and its execution, and should not intervene in such matters.

* *

3. As stated earlier, Paraguay's request was presented to the Court on 3 April 1998 in connection with and at the same time as its Application instituting proceedings against the United States for violations of the 1963 Vienna Convention on Consular Relations. Paraguay's Application was unilaterally submitted to the Court on the basis of the Optional Protocol. I very much doubt that, on the date of filing of the Application and the request, there was any "dispute[s] arising out of the interpretation or application of the [Vienna] Convention" (Optional Protocol, Article I).

If there was any dispute between Paraguay and the United States concerning the interpretation or application of the Vienna Convention, it could have been that the United States was presumed to have violated the Convention at the time of the arrest of Mr. Breard in 1992, as the United States did not inform the Paraguayan consul of that event.

This issue was raised by Paraguay when it became aware of Mr. Breard's situation. In 1996, negotiations took place between Paraguay and the United States concerning the consular function provided for under the Convention. In July 1997, the United States proceeded to remedy the violation by sending a letter to the Government of Paraguay apologizing for its failure to inform the consul of the events concerning Mr. Breard and giving an assurance that this failure would not be repeated in future. In my view, the United States was thus released from its responsibility for violation of the Vienna Convention.

From that time, the question of violation of the Vienna Convention, which may have led to a dispute concerning its application and interpretation, no longer existed. However, this question was raised once more on 3 April 1998, the date on which Paraguay's Application was filed.

4. What did Paraguay ask the Court to decide in its Application of 3 April 1998? Paraguay asked mainly for a decision relating to Mr. Breard's personal situation, namely, his pending execution by the competent authorities of the State of Virginia

Paraguay requested *restitutio in integrum*. However, if consular contact had occurred at the time of Mr. Breard's arrest or detention, the judicial procedure in the United States domestic courts relating to his case would have been no different. This point was made clear in the pleadings of both Parties.

* *

5. I would like to turn to some general issues relating to provisional measures. First, as a general rule, provisional measures are granted in order to preserve *rights* exposed to imminent breach which is irreparable and these *rights* must be those to be considered at the merits stage of the case, and must constitute the subject-matter of the Application or be directly related to it. In this case, however, there is no question of such *rights* (of States parties), as provided for by the Vienna Convention, being exposed to an imminent irreparable breach.

6 Secondly, in order that provisional measures may be granted by the Court, the Court has to have, at the very least, prima facie jurisdiction to deal with the issues concerning the *rights* of the States parties. However I believe that, as regards the present request for provisional measures, the Court does not even have prima facie jurisdiction to handle this matter.

7. Thirdly, if the request in the present case had not been granted, the Application itself would have become meaningless. If that had been the case, then I would have had no hesitation in pointing out that the request for provisional measures should not be used to ensure that the main Application continue. In addition the request for provisional measures should not be used by applicants for the purpose of obtaining interim judgments that would affirm their own rights and predetermine the main case.

8. I have thus explained why I formed the view that, given the fundamental nature of provisional measures, those measures should not have been indicated upon Paraguay's request.

I reiterate, however, that I voted in favour of the Order, for humanitarian reasons, and in view of the fact that, if the execution were to be carried out on 14 April 1998, whatever findings the Court might have reached might be without object.

(Signed) Shigeru ODA.

DECLARATION OF JUDGE KOROMA

My decision to vote in favour of the Order granting the interim measures of protection in this matter was reached only after careful consideration and in the light of the urgency and exceptional circumstances of this case. Torn as I was between the need to observe the requirements for granting provisional measures of protection under Article 41 of the Statute of the Court, thereby ensuring that whatever decision the Court might reach should not be devoid of object, and the need for the Court to comply with its jurisdiction to settle disputes between States which, in my view, includes respect for the sovereignty of a State in relation to its criminal justice system.

It was, therefore, both propitious and appropriate, for the Court to bear in mind its mission which is to decide disputes between States, and not to act as a universal supreme court of criminal appeal. On the other hand, it is equally true that the Court's function is to decide disputes between States which are submitted to it in accordance with international law, applying international conventions, etc. The Order, in my judgement, complies with these requirements.

Paraguay's Application, filed on 3 April 1998 instituting proceedings against the United States for purported violations of the 1963 Vienna Convention on Consular Relations, *inter alia*, requested the Court to grant provisional measures of protection under Article 41 of the Statute so as to protect its rights and the right of one of its nationals who had been convicted of a capital offence committed in the United States and sentenced to death.

The purpose of a request for provisional measures is to preserve as well as to safeguard the rights of the parties that are in dispute, especially when such rights or subject matter of the dispute could be irretrievably or irreparably destroyed thereby rendering the Court's decision ineffective or without object. It is in the light of such circumstances that the Court has found it necessary to indicate interim measures of protection with the aim of preserving the respective rights of either party to the dispute. But prior to this, the applicant State has the burden of indicating that prima facie, the Court has jurisdiction.

When the facts presented were considered by the Court in the light of the Vienna Convention on Consular Relations, in particular in relation to its Articles 5 and 36, and Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of 24 April 1963, the Court reached the correct conclusion that a dispute existed and that its jurisdiction had been established prima facie.

In my view, in granting this Order, the Court met the requirements set out in Article 41 of the Statute, whilst at the same time the Order preserves the respective rights of either party — Paraguay and the United States. The Order called for the suspension of the sentence of execution of Mr. Breard on 14 April 1998, thereby preserving his right to life pending the final decision of the Court on this matter, and also recognized the United States' criminal sovereignty in matters such as charging, trying, convicting and sentencing suspects as appropriate, within the United States or its jurisdiction. I concur with this finding.

In reaching this decision, the Court has also acted with the necessary judicial prudence in considering a request for interim measures of protection, in that it should not deal with issues which are not immediately relevant for the protection of the respective rights of either party or which are for the merits. It also thus, once again confirmed its consistent jurisprudence that a provisional measure of protection should only be granted where it is indispensable and necessary for the preservation of the respective rights of either party and only with circumspection. It was in the light of the foregoing consideration, that I joined the Court in granting the request under Article 41 of the Statute.

(Signed) Abdul G. KOROMA.

UNITED NATIONS **S**

Security Council

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GENERAL

S/1998/316
13 April 1998

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE SITUATION CONCERNING WESTERN SAHARA

I. INTRODUCTION

1. The present report is submitted pursuant to Security Council resolution 1133 (1997) of 20 October 1997, by which the Council extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 20 April 1998, and requested me to report to it every 60 days on the progress made in the implementation of the settlement plan (S/21360 and S/22464 and Corr.1) and the agreements that the parties, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO), had reached for its implementation (S/1997/742, annexes I to III). The present report covers developments since my letter to the President of the Security Council dated 19 February 1998 (S/1998/142), including the continuing efforts of my Special Representative, Mr. Charles Dunbar, and my Personal Envoy, Mr. James A. Baker III, to move the peace process forward.

II. DEVELOPMENTS DURING THE REPORTING PERIOD

2. Since his arrival in the mission area on 9 February 1998, my Special Representative has met with His Majesty the King of Morocco and senior officials of the Government of Morocco, the Secretary-General and other senior officials of the Frente POLISARIO, and the Presidents of Algeria and Mauritania. During March, my Special Representative held extensive consultations with the parties, with senior officials of the United Nations, including the United Nations High Commissioner for Refugees, and with my Personal Envoy.

Identification process

3. In its resolution 1133 (1997), the Security Council requested me to begin the identification of eligible voters in accordance with the settlement plan and the agreements reached between the parties, with the aim of finishing the process by 31 May 1998. The identification operation was resumed on 3 December 1997, as I reported in my letter to the President of the Council of 12 December 1997 (S/1997/974).

4. As at 3 April 1998, 56,703 applicants to the referendum for self-determination in Western Sahara had been convoked by MINURSO for identification since the resumption of the process in December 1997. Of those, 41,660 came before the Identification Commission to be interviewed. They included 1,500 members of tribal groups H41 and J51/52 from among the 4,000 unconvoked individuals who had presented themselves on the days of convocation of members of groups H41, H61 and J51/52 listed in the 1974 census and their immediate families and whom MINURSO had decided to identify, as indicated in my report to the Security Council of 15 January 1998 (S/1998/35). With the 60,112 applicants who had been identified during the first phase of the identification process (August 1994-December 1995), this brings the total number of persons identified thus far to 101,772. Fewer than 60,000 applicants remain to be convoked. In addition, the issue of applicants from the above-mentioned three tribal groups, who number some 65,000 and were specifically discussed under the Houston agreements, remains to be fully resolved.

5. The pace of the identification process in February and March 1998 fell short of expectations, as fewer applicants were identified than in the two previous months when the Identification Commission had not yet been fully staffed. A major reason for this shortfall was the reluctance of the Government of Morocco to start identification at two locations in northern Morocco, as decided in my 15 January report, and to complete the identification of the remaining 2,500 applicants from group H61 from among the above-mentioned 4,000 individuals, pending further clarifications from MINURSO with regard to ways of dealing with all other possible applicants from the above-mentioned three tribal groups, which are contested by the Frente POLISARIO.

6. Furthermore, during the past two months, the identification process has been marred by interruptions provoked by representatives of the two parties attending the identification process over perceived slights and accusations arising from interactions with applicants. At the same time, there have been almost daily accusations in the Moroccan press about an alleged - albeit unsubstantiated - bias against Moroccan-sponsored applicants on the part of members of the Identification Commission.

7. Morocco's concerns with respect to the issue of applicants from groups H41, H61 and J51/52 were expressed by the Minister of State for the Interior of Morocco in a letter addressed to my Special Representative on 24 February 1998, as well as by the Minister for Foreign Affairs of Morocco in a letter to me dated 31 March. These concerns were the subject of consultations conducted by my Special Representative with the Secretariat and with my Personal Envoy in March. Accompanied by the Chairman of the Identification Commission, Mr. Robin Kinloch, my Special Representative conveyed the results of these consultations to the Minister of State for the Interior and the Frente POLISARIO Coordinator with MINURSO at meetings held at Rabat and Tindouf on 27 and 30 March. On 28 March, my Special Representative also addressed letters to both parties to confirm the United Nations position on the outstanding issues regarding the identification process.

8. In these letters, my Special Representative indicated that, without prejudice to subsequent decisions on any additional applicants from tribal groups H41, H61 and J51/52, completion of the identification of the above-

mentioned 4,000 individuals remained the most appropriate approach to reaching a just solution, insofar as this would allow sufficient time working out proposals to deal with the complex issue of those "contested" groups. My Special Representative also indicated that, in the meantime, the identification of applicants from "non-contested" tribes should continue with the utmost vigour and that, to that end, he was prepared to consider expanding identification activities in Morocco, where the majority of applicants yet to be convoked resided.

9. In meetings with the Frente POLISARIO Coordinator and the Minister of State for the Interior held at Tindouf and Rabat on 4 and 6 April, respectively, my Special Representative reached agreement on the identification programme for April, which would begin on 13 April, and on additional identification activities in Morocco at Casablanca, Marrakesh, Meknes and Rabat. The Frente POLISARIO expressed the view that the identification of all the remaining "non-contested" applicants should be pursued on the largest possible scale. The Moroccan authorities agreed to my Special Representative's request that they meet with him on 13 April to discuss the May identification programme and indicated that their approval of the programme would be given promptly. Similar discussions will be held with the Frente POLISARIO. MINURSO also undertook to provide data to the parties on the number of applicants found eligible since the resumption of the identification process in December 1997.

10. In the meantime, the Government of Mauritania agreed with my Special Representative that, in addition to Zouerate, a second identification centre would be established at Nouadhibou.

Civilian police aspects

11. The number of civilian police officers assigned to MINURSO remains at 79 out of an approved total of 81. Under the command of the Civil Police Commissioner, Chief Superintendent Peter Miller (Canada), the civilian police component of MINURSO continues to work closely with the Identification Commission to ensure the smooth conduct of the identification operation.

Military aspects

12. As at 6 April 1998, the military component of MINURSO stood at 230 military observers and other personnel (see annex). Under the command of Maj.-Gen. Bernd S. Lubenik (Austria), the military component continues to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO forces, which came into effect on 6 September 1991. Both sides are adhering to the military agreement that they reached with the Force Commander, as indicated in my report of 15 January 1998 (S/1998/35, para. 18). Both the Royal Moroccan Army and Frente POLISARIO forces have continued to cooperate with the military observers and to extend their support in logistic matters. The MINURSO area of responsibility remains calm, and there have not been any serious indications that either side intends to resume hostilities in the near future.

13. On 16 March 1998, a tragic incident occurred in Sector North, where two Saharans were killed by a cluster bomb that they had found lying in a wadi.

14. After extensive consultations with potential troop contributors, the operational concept for MINURSO was further refined with respect to the command, control and staffing arrangements of the military force headquarters when the Mission is fully deployed.

15. During the reporting period, preparations for the deployment of the engineering unit of MINURSO continued. The primary functions of the unit are related to demining activities, as approved by the Security Council in its resolution 1148 (1998) of 26 January 1998. The Government of Pakistan has formally offered to provide 150 engineering personnel as a contribution to the engineering unit of MINURSO. This engineering unit, whose advanced elements and contingent-owned equipment will arrive in the Mission area by the end of April, is expected to be fully deployed by the end of May 1998. At the request of the United Nations, the Government of Morocco has undertaken to identify sites for the initial deployment of the unit. It is hoped that the necessary information in this regard will be forwarded to MINURSO in a timely manner.

16. Slovakia has recently offered to contribute personnel to strengthen further the Mission's demining capability. In the event that this is necessary in order to ensure the timely completion of all the demining tasks, the deployment of 80 Slovak deminers will be considered in due course. In order to assess the scope of the work involved, engineering and demining experts from Sweden, Pakistan and Slovakia visited the mission area in January, February and March 1998, respectively.

17. Two types of engineering and demining tasks are envisaged. The first type is related to the deployment of the military component of MINURSO. These demining tasks, to be undertaken by the engineering support unit from Pakistan assisted by 73 deminers from Sweden, are planned to be completed within a period of eight weeks, for which the budget has been approved. The second type of task is linked with the repatriation of refugees and involves clearance of approximately 700 kilometres of desert tracks. On the basis of the results of its technical assessment mission to the region, Sweden indicated that its deminers would require an additional period of eight weeks for completing such tasks.

18. While the teams from Sweden, and possibly Slovakia, would be repatriated upon completion of their demining tasks, the engineering support unit from Pakistan is to remain as part of the military component of MINURSO until the fulfilment of the Mission's mandate in Western Sahara.

19. In preparation for the deployment of the formed engineering unit, the Secretariat submitted to the Moroccan authorities on 31 March, for their approval before 30 April 1998, a complete and detailed draft status of forces agreement, as envisaged in the agreement on the privileges and immunities of MINURSO that was concluded between the United Nations and the Government of Morocco in an exchange of letters dated 13 December 1991 and 15 January 1992, respectively. Pending the conclusion of that status of forces agreement, the model status of forces agreement of 9 October 1990 (A/45/594), endorsed by the General Assembly should apply on a provisional basis. On 3 April, the Secretariat submitted similar draft status of forces agreements to Algeria and Mauritania for their timely approval.

Preparatory work for the repatriation of Saharan refugees

20. During the reporting period, the Office of the United Nations High Commissioner for Refugees (UNHCR) advanced in its preparations for the voluntary repatriation of Saharan refugees eligible to vote and their immediate families, as provided for in the settlement plan. In this connection, UNHCR representatives were deployed to Laayoune in the territory and Zouerate in Mauritania and increased their presence in the Tindouf area of Algeria. Pre-registration of refugees in Zouerate and Tindouf continued, with some 5,100 and 7,300 refugees pre-registered to date, respectively. Various other preparatory activities were initiated, including logistics and physical infrastructure planning, a public information campaign as a continuing exercise for confidence-building among the refugees and a mine-awareness campaign in the Tindouf camps.

21. Specific concerns were discussed by UNHCR with the relevant authorities and the refugees regarding logistic planning assumptions, such as the mode of transportation and places of return. UNHCR is consulting closely with my Special Representative to address these concerns within the framework of the objectives established in the settlement plan.

22. The special appeal by UNHCR for funds for its repatriation programme is under review. In this regard, UNHCR provided a briefing to potential donor countries on the programme and related financial requirements, which, on the basis of transport and logistic considerations, are estimated to exceed $50 million.

23. Follow-up meetings were also held by UNHCR with the World Food Programme (WFP) regarding WFP planning for the provision of basic food rations to the returnees in the territory, as foreseen in the UNHCR repatriation programme.

III. ADMINISTRATIVE AND FINANCIAL ASPECTS

24. During the reporting period, deployment of MINURSO civilian staff continued. By the end of March 1998, its total number stood at 326 (245 international and 81 local). The Governments of Morocco and Algeria continued to extend their support in accommodating the increased number of MINURSO staff. The Frente POLISARIO also extended its support by providing facilities for the work of the Identification Commission. In Mauritania, accommodation was secured at Zouerate for MINURSO personnel, sheikhs, and the observers of the two parties and the Organization of African Unity (OAU). Similar arrangements will be required at Nouadhibou.

25. The communication network of the Mission was expanded to link the new identification centres. Building maintenance activities increased substantially owing to these additional sites and increased needs. The identification centres in Laayoune required the installation of transformers. The additional vehicles purchased under the replacement programme are expected to arrive by the end of July 1998.

26. The extension of identification activities in northern Morocco and Mauritania, as presently planned from the second half of April will not be feasible without additional air support, supplemented by assistance from Morocco, in transporting its observers and Saharan sheikhs. A fourth medium-cargo aircraft would be needed for this purpose.

27. Based on my proposal, by its resolution 52/228 of 31 March 1998, the General Assembly appropriated an additional amount of $17,172,300 gross for the period ending 30 June 1998 for the resumption of identification tasks and the deployment of an engineering unit for demining activities pursuant to Security Council resolutions 1133 (1997) and 1148 (1998).

28. The proposed maintenance budget of MINURSO for the period from 1 July 1998 to 30 June 1999 has been submitted to the General Assembly for consideration at the second part of its resumed fifty-second session. The proposed budget amounts to some $65.1 million gross and is based on the maintenance of its current authorized strength.

29. Accordingly, should the Security Council decide to extend the mandate of MINURSO, as recommended in paragraph 35 below, there will be no need to revise the budget that has already been submitted to the General Assembly. However, taking into account my observations contained in paragraph 35, the deployment of MINURSO at full strength for the holding of the referendum would require a revised budget, for which I will submit proposals in due course.

30. As at 31 March 1998, unpaid assessed contributions to the MINURSO special account for the period since inception to 31 March 1998 amounted to $50.6 million. The total of outstanding assessed contributions for all peacekeeping operations as at 31 March 1998 was $1,547.0 million.

IV. OBSERVATIONS AND RECOMMENDATIONS

31. During the months of December 1997 and January 1998, the spirit and pace of the identification process generated hope that the target date of completing it by 31 May 1998 could be met. However, it is now unlikely that this goal will be achieved. The delay is due to the slowdown in identification activities in February and March and to the lack of progress in resolving issues linked to the identification of applicants from the three tribal groups indicated in paragraph 4 of the present report. In addition, the climate of mutual mistrust as described in paragraph 6 has not been conducive to expediting and facilitating MINURSO's task. I am concerned that the current tensions may increase as completion of the identification process approaches. In this connection, I must express concern about the continuing propaganda against MINURSO in the Moroccan press, which is clearly unjustifiable and should be halted.

32. Provided that both parties cooperate fully, in accordance with the commitments which they freely entered into, it should be possible, taking into account the delay that has occurred, to complete the identification of all applicants from the "non-contested" tribes by the end of July 1998. However, until the outstanding issues concerning applicants from the three "contested"

tribal groups are resolved, and since it is not known for certain how many of these applicants may present themselves, it is not possible at this stage to specify the time required for completion of the identification process.

33. Notwithstanding the considerations above and the ensuing delays in the start of the transitional period and the repatriation of Saharan refugees, it is important that the United Nations demining activities start as soon as possible, as decided by the Security Council in its resolution 1148 (1998). In this context, I accept the assessment of the Swedish team, as indicated in paragraph 17 above, that an additional period of eight weeks will be required for it to complete its demining tasks.

34. In the context of the factors outlined above, I urge both Morocco and the Frente POLISARIO to cooperate fully with my Special Representative and the Identification Commission so that the identification process may move forward. They must also cooperate with UNHCR in its preparatory work for the repatriation of Saharan refugees. The full cooperation of the Government of Morocco, as well as the Government of Algeria and Mauritania, is also required so that the draft status of forces agreements can be approved in good time.

35. In the present situation, the months of May and June will be crucial for determining whether the identification of all the applicants that remain to be convoked can be completed by the end of July and whether a solution can be found to the problem of the three tribal groups mentioned above. If, by the end of June, sufficient progress has been made in the identification process and in the search for solutions to the contentious issue of these groups, I would submit, in my next report to the Security Council, recommendations for a revised timetable for the full implementation of the settlement plan, including preparatory measures for the establishment of the Referendum Commission. If, on the contrary, no solution has been found to the problem of the three "contested" groups and if a large number of applicants from "non-contested" tribes also remains to be identified, it would be my intention to recommend that the Security Council reconsider the viability of the mandate of MINURSO. In the meantime, I recommend that the mandate of MINURSO be extended for a period of three months, until 20 July 1998.

Annex

Composition of the military component of the United Nations Mission for the Referendum in Western Sahara

	Authorized strength as at 6 April 1998		
	Military observers	Support units	Total
Argentina	1		1
Austria	5		5
Bangladesh	6		6
China	16		16
Egypt	19		19
El Salvador	2		2
France	25		25
Ghana	6	7[a]	13
Greece	1		1
Guinea	3		3
Honduras	12		12
Ireland	8		8
Italy	5		5
Kenya	8		8
Malaysia	13		13
Nigeria	5		5
Pakistan	5		5
Poland	3		3
Portugal	4		4
Republic of Korea	0	20[b]	20
Russian Federation	25		25
United States of America	15		15
Uruguay	13		13
Venezuela	3		3
Total	203	27	230

[a] Force orderly room.

[b] Medical personnel.

Map No. 3691 Rev. 16 UNITED NATIONS
April 1998

Department of Public Information
Cartographic Section

UNITED
NATIONS

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General Assembly
Security Council

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GENERAL ASSEMBLY
Fifty-second session
Agenda item 43
THE SITUATION IN AFGHANISTAN
AND ITS IMPLICATIONS FOR
INTERNATIONAL PEACE AND SECURITY

SECURITY COUNCIL
Fifty-third year

Letter dated 10 April 1998 from the Permanent Representative of Kyrgyzstan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the text of an appeal of the Legislative Assembly and the Assembly of People's Representatives of Zhogorku Kenesh (Parliament) of the Kyrgyz Republic entitled "Let peace and prosperity come to the land of Afghanistan" addressed to the parliaments and parliamentarians of all Member States (see annex).

I should be grateful if you would have the text of this letter and its annex circulated as a document of the fifty-second session of the General Assembly, under agenda item 43, and of the Security Council.

(Signed) Zamira ESHMAMBETOVA
Permanent Representative
of the Kyrgyz Republic
to the United Nations

98-10111 (E) 140498 150498

/...

Annex

[Original: Russian]

Appeal adopted on 17 March 1998 by the Legislative Assembly and Assembly of People's Representatives of the Zhogorku Kenesh (Parliament) of the Kyrgyz Republic to the parliaments and parliamentarians of all States

"Let peace and prosperity come to the land of Afghanistan"

We, the deputies of the Legislative Assembly and the Assembly of People's Representatives of the Zhogorku Kenesh (Parliament) of the Kyrgyz Republic,

Taking fully into account and highly appreciating the role of the parliaments and parliamentarians of the States of the world in strengthening peace and eliminating the serious problems that still exist on this planet,

Appeal, in this goodwill message, to the parliaments and parliamentarians of all States to render assistance with a view to achieving a peaceful solution of the protracted confrontation of the sides in the inter-Afghan conflict.

The peace-loving people of Kyrgyzstan and its Government are deeply concerned at the hostilities taking place in the friendly Islamic State of Afghanistan, which have brought untold misfortune to women, children and old people and the civilian population in general and senseless losses of human lives to the opposing military formations.

Kyrgyzstan, which is historically committed to the principles of tolerance and non-interference in the internal affairs of other States, is deeply convinced: the long-standing inter-Afghan confrontation can be ended through peaceful political dialogue at the negotiating table.

In supporting the main idea of the appeal of the President of the Kyrgyz Republic, Mr. Askar A. Akayev, to the Secretary-General of the United Nations, the heads of State and Government whose countries are members of the Secretary-General's "group of friends of Afghanistan" and the leaders of the opposing sides in Afghanistan, which contained the sincere proposal to hold in Bishkek, Kyrgyzstan's capital, a peace conference on Afghanistan under the United Nations auspices, we believe that the interested parties from the States that have expressed their desire to take part in such a conference will be able to speak freely and make constructive proposals on all fundamental aspects of a solution of the Afghan question, bearing in mind their understanding of the problem and guided by the common goal of restoring long-awaited peace and tranquillity in unfortunate Afghanistan.

In giving the United Nations the key role in organizing and convening the aforementioned conference, we hope that, in seeking to find ways of breaking the deadlock in the Afghan crisis, representatives of the Afghan sides and interested States will participate at the highest official level and on a multilateral basis.

Deeply aware of the complexity of the search for peaceful means - there is no alternative - of settling the conflict in Afghanistan, we, the deputies of the Parliament of the Kyrgyz Republic, trusting in the eternal truth of the triumph of Good, believe: the conflict will finally be settled and the unity of the will and spirit of all of us parliamentarians of the world can guarantee such an outcome.

The Legislative Assembly and the Assembly of People's Representatives appeal to all the parliaments and parliamentarians of the planet to support the convening and holding in Bishkek of a conference of international representatives on a peaceful settlement of the conflict in Afghanistan and to participate actively with a view to contributing to its success.

Let peace and prosperity come to the land of Afghanistan.

Adopted at a joint meeting of the Legislative Assembly and the Assembly of People's Representatives of the Zhogorku Kenesh (Parliament) of the Kyrgyz Republic.